

No.

187

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Supreme Court of the United States

OCTOBER TERM, 1951

No. 187

SAM K. CARSON, COMMISSIONER OF FINANCE
AND TAXATION FOR THE STATE OF TENNES-
SEE, PETITIONER,

vs.

CARBIDE AND CARBON CHEMICALS
CORPORATION ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF TENNESSEE

PETITION FOR CERTIORARI FILED JULY 13, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

\$476.71, in all the sum of \$2,860.29, and all the costs of this cause, all of which will be certified for payment in the manner prescribed by law. 3/9/51.

[fol. 5] IN SUPREME COURT OF THE STATE OF TENNESSEE

Davidson Equity. Stay order

CARBIDE & CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation
and

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation
and

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation
and

WILSON WEESNER-WILKINSON COMPANY and ROANE-ANDERSON
COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

DECREE—March 16, 1951

On application of James Clarence Evans, Commissioner of Finance and Taxation of the State of Tennessee, appellee in these consolidated causes, that the judgment heretofore entered in these consolidated causes be stayed pending application to the Supreme Court of the United States for the writ of certiorari, and it appearing to the Supreme Court of Tennessee from the statement of counsel and from the application that petition for the writ of certiorari will be filed in the Supreme Court of the United States within the ninety-day period fixed by law, and that counsel repre-

senting the opposing parties in these consolidated causes, [fol. 6] except the intervenor, has been notified of this application for a stay order, and has not appeared to resist the same:

It is ordered that the judgment entered in said consolidated causes be stayed for a period of ninety days from March 9, 1951. 3/16/51

(S.) A. B. Neil, Chief Justice, Supreme Court of Tennessee.

[fol. 7] IN SUPREME COURT OF TENNESSEE

CARBIDE & CARBON CHEMICALS CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICALS CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

and

WILSON-WEESNER-WILKINSON COMPANY and ROANE-ANDERSON
COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation, etc.

OPINION—March 9, 1951

For Appellants: S. Frank Fowler, Knoxville, Tennessee.

For U. S. Government, Intervenor: T. L. Caudle, Ellis N. Slack, and Berryman Green, all of Washington, D. C.

Of Counsel: Joseph Volpe, Jr., Bennett Boskey, both of Washington, D. C., J. Wallace Ould, Jr. and Harold L. Price, Oak Ridge, Tennessee.

For Commissioner of Finance and Taxation, Appellee: Roy H. Beeler, Attorney General; William F. Barry, Solicitor General; and Allison B. Humphreys, Jr., Advocate General, all of Nashville, Tennessee.

[fol. 8] The question for our decision in these consolidated cases is whether or not the appellants are liable for sales taxes and use taxes as applied by Chapter 3 of the Public Acts of 1947 as amended, Retail Sales Tax Statute.

Both of these taxes are privilege taxes and they have been defined by this Court as: "The sales tax imposes upon the seller a tax for the privilege of selling tangible personal property and is required to be paid by the seller. *Hooten v. Carson*, 186 Tenn., 282, 283, 209 S. W. (2d) 273. The use tax is a tax upon the privilege of using, consuming, distributing or storing tangible personal property after it is brought into this State from without this State." *Madison Suburban Utility District v. Carson*, — Tenn. —, 232 S. W. (2d) 277, 280.

The present suits were brought as test cases. During the fall of 1947, the appellants paid under protest a sum of money slightly in excess of \$5,000.00 to the Commissioner of Finance and Taxation, and brought suit, as provided by Tennessee Code sections 1790 et seq., to recover such taxes. It was said in argument that about two million dollars is eventually involved. After suits were instituted and during the progress of the trial, the United States government petitioned to and was allowed to intervene as an intervenor herein. The position taken by the United States government is identical in all respects with [fol. 9] that of the appellants named above. It was stipulated during the progress of the trial that since the suits were instituted, the Commissioner of Finance and Taxation was then James Clarence Evans and the suits were revived as to him.

The chancellor held that the taxes were properly collected by the Commissioner of Finance and Taxation and accordingly dismissed the suits. These suits have been consolidated, were argued together, and it was agreed that we could render one opinion applicable to all, as the questions raised were identical. These suits involve a typical transaction between the contractors and the vendors wherein the question of whether or not this Tennessee sales

tax and use tax are applicable under the factual situation as very thoroughly developed in this large record.

There are numerous assignments of error. As a whole, though, these assignments go to the finding or the failure of the chancellor to find facts according to the contention of the appellants. There are two contentions made by the appellants, both of which were answered contrary to their contention by the chancellor, either of which if answered in the affirmative would sustain the suits in these cases. These contentions are: (1) That the Tennessee Sales Tax Statute as applied to purchases and procurements herein is invalid and an infringement of the Federal constitutional immunity [fol. 10] of the means and instrumentalities employed by the United States to carry on its functions and (2) that if there is no implied Federal constitutional immunity under the facts developed in this case, that then under the terms of Section 9(b) of the Atomic Energy Act, creating this Federal agency, that Congress has exempted the property, income, and activities of the Commission from state or local taxation "in any manner or form."

Why these contentions?

Prior to our entering World War II in December, 1941, scientists were convinced that an atomic weapon could be made. These scientists with a group of others convinced the President of the United States and his advisers that this could be done. Accordingly, the President appointed a committee who in turn further convinced him of the possibilities of such a weapon, and from this the government began the development of facilities to develop such a weapon. It was necessary in the development of atomic energy that great secrecy be kept; that the proceedings toward development of such energy be greatly separated, for security reasons and for reasons of health and safety of the people of the United States, because "probably the largest calculated risk anyone ever took" (Smyth Report) was being undertaken. Thus, rather isolated large areas of land were acquired in different sections of the United States, such as approximately 59,000 acres in Anderson and Roane Counties, Tennessee on the Clinch River; Han- [fol. 11] ford, Washington on the Columbia River; and Los Alamos, New Mexico. Other places for research were acquired and used near the University of Chicago, etc.

As a part of this effort, the government in September, 1942 began to develop the Clinton Engineering Works,

commonly called Oak Ridge, which was a unit of the Manhattan District established under the War Powers Act on executive orders of the President of the United States to carry on this research and development of the atomic bomb. The Manhattan District was under the direction of the United States Army Corps of Engineers; and the bomb was the immediate objective.

"A weapon has been developed that is potentially destructive beyond the wildest nightmares of the imagination; a weapon so ideally-suited to sudden unannounced attack that a country's major cities might be destroyed overnight by an ostensibly friendly power. This weapon has been created not by the devilish inspiration of some warped genius but by the arduous labor of thousands of normal men and women working for the safety of their country." Smyth Report, page 163, released in August, 1945.

Because of the enormity of the problem that was involved and the fact that no individual or corporation had had any experience in this particular kind of a field, it was necessary for the Army Engineers to employ various and sundry large corporations of America who had the "know-how" in various and sundry scientific fields and other fields which [fol. 12] were necessarily involved in the development of atomic energy. Consequently, the government entered into cost-plus-fixed-fee contracts with these corporations. To mention a few are: Carbide & Carbon Chemical Corporation; Monsanto Chemical Corporation; General Electric Corporation; DuPont Company, and many others. It soon developed that it would be necessary to construct housing facilities for the workers and employees and key personnel of these various companies who were to operate these enormous plants. For instance, at Clinton, Tennessee, an entire new city of some forty of fifty thousand people grew up almost overnight. To operate this city for these people, all of the facilities for a modern city were needed. The Army did not possess the "know-how" to develop such a city but they had had experience with a construction company in New York who knew how to do such a thing, consequently, this construction company was contacted and they in turn formed the Roane-Anderson Company, a Tennessee corporation, for the purpose of operating the Town of Oak Ridge. Roane-Anderson entered into a cost-plus-fixed-fee contract with the Army for this work. The Carbide &

Carbon Chemical Corporation entered into a like contract with the government to operate certain plants at Oak Ridge.

This development under the Army Corps of Engineers was of course designed to achieve the maximum military result which it did, as all of us now know. In the development [fol. 13] of nuclear energy it became apparent to those connected with this development that it would be necessary for the government to maintain some sort of control in this field after the war. As a result of this feeling, recommendations were made to the Congress of the United States who after a full debate passed an Act for the development and control of atomic energy, August 1, 1946. This complete Act is carried in U. S. C. A. 42, Sections 1801 through 1819. By this Act, the Atomic Energy Commission was created, and they constitute a committee having a governmental monopoly in this field of atomic energy. This Act, among other things, declares that "the development and utilization of atomic energy shall, so far as practicable, be directed toward improving public welfare, increasing the standard of living, strengthening free competition in private enterprise, and promoting World peace."

The Atomic Energy Commission, having a right to do so under the Act, saw that their duties were so gigantic and complicated technically that it would be impossible for any one company to handle their undertakings. Accordingly, the Commission has entered into various and sundry cost-plus-fixed-fee contracts with various and sundry contractors who possess the "know-how" in their respective fields. The Commission in this way either directly or through these contractors, carries on a wide and extensive program for the United States government in the field of atomic [fol. 14] energy, including the production of materials for atomic weapons, and the production of radio-active materials for the use and research and development activities relating to atomic energy. The plants selected and established by the Army Corps of Engineers have been continued.

The land and all facilities in the plant at Oak Ridge are wholly owned by the United States government.

The principal contractor of the Commission in Oak Ridge for the operation of its plants there is the appellant Carbide & Carbon Chemical Corporation (hereinafter for short, referred to as Carbide.) The town management contractor for the Town of Oak Ridge is the appellant, Roane-Anderson Company (hereinafter referred to as Roane-Anderson).

Carbide operates the production facilities at Oak Ridge and these concentrate on the production of uranium-235, a fissionable material, over which the Commission is given by the Act monopoly. Carbide also operates various and sundry other plants there. Carbide also operates at present the Oak Ridge National Laboratory, a laboratory for atomic energy research. In the laboratories, research of fundamental importance to production and use of fissionable material is carried on and radioactive isotopes which are proving an enormous benefit to medical, biological, agricultural, and industrial research of all kinds are produced and distributed.

The Town of Oak Ridge, as heretofore said, is located on [fol. 15] Commission-owned site and exists for the sole purpose of providing the necessary community facilities and services to some thirty-odd thousand people employed by the Commission and its contractors at the Oak Ridge installation. Most of the necessary town management functions and services are carried out by Roane-Anderson pursuant to its cost-plus-fixed-fee contract. Roane-Anderson operates the normal municipal services, such as utilities, fire protection, garbage disposal, and maintenance of roads and streets, and also oversees the operation of concessions, and performs a number of other services necessary to the welfare of the employees at the atomic energy facilities.

The first two cases brought are for the purpose of testing the use tax where Carbide and Roane-Anderson purchased from an out-of-state vendor. The third and fourth cases are to test the sales tax, the third being where coal was bought by Carbide from the Diamond Coal Mining Company and the other being a machine bought by Roane-Anderson from the Wilson-Weesner-Wilkinson Company.

The first contention made by these appellants, along with the United States Government, is that Carbide and Roane-Anderson are not independent contractors but are agencies or instrumentalities of the United States Government, and are, therefore, not subject to the tax. If the appellants are independent contractors, they would be liable for the tax [fol. 16] because the implied immunity under the United States Constitution would not apply to them for reasons hereinafter set forth, unless this implied immunity is properly implemented by a Congressional Act. Let us, therefore, first investigate the contracts between these appellants and the Commission and try to determine whether or not they

are agencies of the Commission or independent contractors.

The distinctions between an independent contractor and an agent are not always easy to determine, and there is no uniform rule by which they may be differentiated. "Generally, the distinctions between the relation of principal and agent and employer and independent contractor is based on the extent of the control exercised over the employee in the performance of his work, he being an independent contractor if the will of the employer is represented only by the result, but an agent where the employer's will is represented by the means as well as the result." 2 C. J. S., page 1027.

The distinction generally between an independent contractor and an agent "depends upon the intention of the parties as expressed in the contract." *Standard Oil Co. of La. vs Fontenot, La. 4 So. (2d) 634, 643.* We must, therefore, in the first instance look to the contract between these parties for the intention therein expressed rather than look to the Acts of the parties. Of course, every case must be [fol. 17] determined under the contract and the facts of the particular case. It frequently occurs, as it apparent does in the instant case, that contractors have made a contract with a party and have served over a long period of time in such an efficient and excellent manner that the contractor acts somewhat in many capacities as though he were the agent of the person with whom he has contracted. This is especially true in a cost-plus-fixed-fee contract wherein the contractor is reimbursed for any and all expenditures and he is doing the character of work he does in the instant cases. The operations of these contractors are in general separate from the normal scope of business operations of the companies; Roane-Anderson was established for the sole purpose of carrying out its community management activities under contract with the Commission; and Carbide has set up a separate division to carry out its contract with the Commission. The contracts are of a long-term, continuing relationship between government and industry. They do not contemplate the performance of a particular narrowly-defined task which the outlines are fully known in advance, but are entered into with knowledge that operations are subject to continual revision, modification, and change, in the light of technical development and as a result of the evolution of Commission policy.

The programs carried on by these contractors are pro-

grams for which the Commission is responsible. The nature [fol. 18] and scope of these programs obviously is subject to the determination of the Commission but at the same time the contractor possessing the "know-how" in its own particular field conducts its work according to its determination of how this work should be done. The land, materials, equipment, supplies, plans, designs, and records used in the operation of the facilities, as well as the products of the operation, belong to the Commission. Knowledge, techniques, inventions and discoveries gained from the work are subject to strict control by the Commission. The work of the contractors is subject to close supervision at all stages and at all times by representatives of the Commission who have offices at the Oak Ridge site, and whose chief responsibilities center on the operations carried on by the operating contractor. These Commission representatives establish policy, supervise and inspect the work, review sub-contracts and purchases for approval, inspect and audit the records in accounts of the contractors, and cooperate with the contractors in the solution of the manifold problems connected with the operating of the facilities. The work must be carried on in accordance with the safety and security regulations of the Commission, and those employees of the contractors who have access to restricted data are investigated by the F. B. I., and given security clearance by the Commission. Key personnel of the contractors' organizations may be employed with the approval of the Commission. [fol. 19] The salaries of all of their employees are controlled by policies and standards approved by the Commission and the Commission may direct the dismissal of any such employees whom the Commission deems "incompetent, careless or insubordinate," or whose continued employment is deemed inimical to the public interest.

The contractors are not required to risk their own money in the operation of Commission facilities. This provision of the contract obviously came about by reason of the enormity of the project, the newness of what was being done and of the uncertainty of the result. It is said that "regardless of what happened the government would pay the bill" and it was on this basis that the contracts were originally made with the various companies in the production of atomic energy. All the contracts have a "hold-harmless" provision and the expenses and procurements are on a reimbursable basis. The Carbide contract specifically provides that Car-

hide shall not be obligated to use any of its own funds in the performance of work under the contract, and further provides that, upon request of the contractor, the government shall advance monies to be used for carrying out the purposes of the contract. Under this provision, Carbide has used only government money for activities under its contract. Roane-Anderson originally used some of its own money in performing its contract, revenues which it collected from concessionaries and occupants of housing in Oak Ridge [fol. 20] soon made up the greater part of its funds which were used in the contract. Roane-Anderson's contract provided that such monies collected should be used to reduce the cost of the work. Since October, 1948, Roane-Anderson has been receiving advances to carry on its work in the same manner as Carbide.

Most of the materials and supplies necessary to the operation of the Commission facilities are purchased by or through the contractors. By contract the Commission reserves the right to pay suppliers directly, but customarily permits payments to be made by the contractors, who are then reimbursed by the government. Although the contracts originally provided that title to articles acquired under the contracts should pass to the government at a point designated by the contracting officer, the record shows that as a matter of practice, title to such articles has never been considered to be in the contractor but has always been treated as having passed to the government at the time title passed from the vendor. The language of the contract is contrary to the existing practices of the parties. Since 1948, the contract of Roane-Anderson has provided expressly that in the procurement of supplies necessary to the performance of work under the contract, Roane-Anderson should act as the agent of the government, but "all personnel and labor shall be and remain for all purposes the employees of the Contractor."

[fol. 21] The record shows that ordinarily the vendor looks to the contractor for payment. The custody then is vested in the contractor who puts it in one of the various storing houses of the Commission and the property is stamped to show that the property belongs to the United States Government and then with another designation of either Carbide or Roane-Anderson. The goods are usually shipped on a government bill of lading or on a commercial bill of lading with a notation to be converted to government

bill of lading at destination. This was done to save some cost in shipment expenses. Since 1948, the contractor has paid the Federal transportation tax except where shipment was to the Government on a government purchase order.

The general manager of the Commission in a statement submitted to a congressional committee on February 17, 1949, in part said:

“Operation of our plants and laboratories through established independent contractors not only gives to the Atomic Energy Program substantial benefits from accumulated experience and established facilities; it also establishes the interest and the support of industry and universities for future private development.”

Of course, the terming of these contractors, “independent contractors,” by Mr. Wilson does not necessarily deter-[fol. 22] mine the question. We must look to the contracts, facts and intent of the parties, etc. as heretofore said. This, though, does give a rather clear statement as to what the intention of the Commission was in making these contracts.

Another indication and illustration as contained in the contracts is that if the bills for the purchase of materials, machinery or equipment or payrolls are not paid promptly by the contractor or the sub-contractor, the contracting officer may in his discretion withhold payments otherwise due, equivalent to the amounts of such unpaid items. The contract also provides that upon the completion of the work that the Government in making settlement with a contractor may withhold any sum necessary to settle claims against the contractor. The contract provides: “The contracting officer shall accept the completed work hereunder with reasonable promptness.”

The nature of the plant operation is such that the government does not have on its staff or in its employ the technical means or qualifications to operate the plant. Each of the production plants is operated by a contractor who has considerable experience in the industrial operation of a chemical separation plant and gaseous diffusion plants, electromagnetic separation plants, etc. The work of Roane Anderson in city management is a specialty for which they were particularly selected.

We must hold that after making a rather thorough study

[fol. 23] of the contracts of Carbide and Roane-Anderson and the facts developed in this record, that these contractors are independent contractors. Omitting for the present any consideration of the provisions of the Atomic Energy Act with reference to the contractors herein, we might say that as far as we know the Congress has never seen fit to pass a general act immunizing general contractors who are doing work for the government wherein the government in the end had to pay the taxes assessed against the contractors. The reason that Congress has not passed such a general act is probably because "the burden of Federal taxation necessarily set an economic limit to the practical operation of the taxing power of the states, and vice versa. Taxation by either the state or the Federal Government affect in some measure the cost of operation of the other." As "neither government may destroy the other or curtail in any substantial manner the exercise of its powers," the taxing power of each, so far as it affects the other, "must receive a practical construction which permits both to function with the minimum of interference each with the other; and that limitation cannot be so varied or extended as seriously to impair either the taxing power of the government imposing the tax—or the appropriate exercise of the functions of the government affected by it." *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384.

[fol. 24] The recent decisions of the Supreme Court of the United States have held that state taxes on independent contractors with the United States Government were subject to collection and that there was no implied immunity insofar as these independent contractors were concerned. A very excellently reasoned case is that of *James v. Dravo Contracting Company*, 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, 114 ALR 318; wherein a state tax on the gross receipts of a contractor with the Federal government was allowed. State sales and use taxes on purchases of materials used by a contractor in performing a cost-plus-fixed-fee contract with the United States was allowed in *State of Alabama v. King & Boozer*, 314 U. S. 1, 62 S. Ct. 43, 86 L. Ed. 3, 140 ALR 615; *Curry v. U. S.*, 314 U. S. 14, 62 S. Ct. 48, 86 L. Ed. 9. The Court in *King & Boozer* case, *supra*, pointed out that "—the Constitution, *unaided by congressional legislation* (does not prohibit), a tax exacted from the contractors merely because it is passed on economically, by the

terms of the contract or otherwise, as a part of the construction cost to the government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the government, that is but a normal incident of the organization within the same territory of two independent taxing solvents. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added cost, attributable to the taxation of those who furnish supplies to the government and who have been granted no tax immunity." (Emphasis ours.)

The question is now foreclosed under the authorities last above cited. True, eminent legal minds have differed on the conclusions reached in these cases, as is evidenced by the very strong dissent of Mr. Justice Roberts in which he was joined by Mr. Justice McReynolds, Mr. Justice Sutherland and Mr. Justice Butler in *James v. Dravo*, supra. This dissent and many authorities therein cited runs somewhat like the argument on behalf of the contractors in their insistence on the first contention made, that is, that the contractors herein had an implied immunity from state taxation because the Federal government was bearing the burden of this tax.

The second contention has given us far greater concern than the first and as we view it, it is the question in the lawsuit.

We assume, since no question is here raised, that the creation of the Atomic Energy Commission, 60 Statute 755, 42 U. S. C. A., 1801-1819, was a constitutional exercise of "the congressional power and that the activities of the Commission through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments." *Pittman v. Home Owners' Loan Corp.*, [fol. 26] 308 U. S. 214 60 Sct. 15, 84 L. Ed. 11, 124 ALB, 1263.

It was conceded in the argument that the Congress has the power to protect the instrumentalities thus created by it. This concession must necessarily follow in view of certain provisions of the United States Constitution, as follows:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the

territory and other property belonging to the United States—." Article IV, Sec. 3, Cl. 2. It also gives Congress the power "To make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States." Article I, Sec. 8, Cl. 18, U. S. C. A. It makes the laws of the United States enacted pursuant thereto, "the supreme law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." Article VI, Cl. 2.

This power of Congress to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of agencies of the Federal government has been recognized a number of times by the Supreme Court notably [fol. 27] in *Pittman v. Home Owners' Loan Corporation*, supra; *Federal Land Bank v. Bismarck Lumber Co.*, 314 U. S. 95, 62 S. Ct. 1; *U. S. v. Allegheny County*, 322 U. S. 174, 64 S. Ct. 909, 88 L. Ed. 1209, and other cases therein cited.

In the *Pittman* case, it was said by the Court that:

"In the exercise of this power to protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field."

In questions of the kind, whether immunity shall be extended to situations like those in the instant cases is essentially a legislative question, because as we have seen above, in the treatment of the first contention made herein, such immunity is not granted when unaided by congressional legislation. Did the Congress of the United States enact appropriate legislation to immunize the contractors involved in the instant case?

If such immunity exists, it is derived from Section 9(b) of the Atomic Energy Act (42 U. S. C. A., Sec. 1809). The answer to the question rests primarily upon a proper construction of this section of the Act. The pertinent part thereof is as follows:

"The commission, and the property, activities, and income of the Commission, are hereby expressly exempted from

taxation in any manner or form by any state, county, municipality, or any subdivision thereof." (42 U. S. C. A. Sec. 1809, sub-division b.) (Emphasis ours.)

[fol. 28] Obviously, the question presented is whether the purchase and use of materials and supplies by cost-type contractors of the Atomic Energy Commission in the performance of their contracts are part of the "activities—of the Commission" within the intendment of the provision just quoted and are thereby exempted from taxation by any state, county or subdivision thereof "in any manner or form."

The Atomic Energy Commission as an agency of the executive branch of the United States Government is entitled to all the privileges, immunities and rights of the United States, including that of immunity from state and local taxation. *Graves v. N. Y., ex rel O'Keefe*, 306 U.S. 466, 59 S. Ct. 593, 83 L. Ed. 927, 120 ALR 1466. This is and would have been true had Section 9(b) of the Act above quoted not been included in the Act.

Section 9(b), in its first three sentences authorizes the Commission under stated conditions and circumstances to make payments to state and local governments (in its discretion) for loss to them of taxes due to the government taking this property and it is noted that there is no submission to state and local taxation. In the fourth and concluding sentence of Section 9(b), Congress provided the exemption above quoted in which it specifically says that the "activities" of the Commission shall not be taxed "in any manner or form."

Should we give this exemption a narrow construction or [fol. 29] should the exemption be construed by us so as to give it a scope commensurate with the broad activities carried on by the Commission at its major installations?

The chancellor was of the opinion that since Congress had included the word "agents" in the third sentence of Section 9(b) of the Act, that is the sentence immediately preceding the exemption sentence above quoted, that it was not the intention of Congress to relieve these contractors from taxation. His reasoning is based upon the fact that since 9(b) expressly authorized the Commission to reimburse state and county or local governments for the amount of taxes lost by them due to the acts of the previous parties and the Manhattan District and their agents that then by

eliminating the word "agents" out of the exemption provision that this clearly indicated that Congress did not intend to include these contractors in the exemption.

We do not see how the Congress could have chosen a much broader word than it did when it chose the word "activities" to use in its application for those things that were exempt from taxation "in any manner or form." It seems that there was absolutely no reason, in view of using this broad term "activities" to specify individuals or individual actors because the term within itself would cover anything that the Commission was undertaking to do.

Congress prior to the enactment of the Atomic Energy Act and subsequent thereto knew of the services of operating contractors at the major atomic energy installations [fol. 30] and knew that it had been the practice of the Manhattan Engineering District to conduct its activities through these operating contractors. At Oak Ridge, for example, the Monsanto, Carbide and Roane-Anderson and Stone and Webster and numerous other contractors operated in conducting the activities there and these contracts which were entered into then by the Manhattan District were transferred over to the Atomic Energy Commission by executive order of the President. At the Hanford operations the DuPont Company had served as an operating contractor during the war and was succeeded by the General Electric Company. At Los Alamos the University of California had been the operating contractor for the weapons work from the very start of activities at that remote site. Similarly, the University of Chicago had been the operating contractor for the Atomic energy activities centered in the Chicago area. The Carbide people had operated the gaseous diffusion production facilities at Oak Ridge since they were constructed. The Roane-Anderson people were specially formed for the purpose of managing and operating the Town of Oak Ridge for the Manhattan District. All of these circumstances were well known to the Congress when it had under consideration the various proposals for atomic energy legislation.

At the time hearings were held on the May-Johnson Bill (H.R. 4280, H.R. 4566, 79 Cong., 1st sess.) and the McMahon [fol. 31] Bill (S. 1717, 79 Cong., 1st sess.) Congress had before it the Smyth Report, which we have heretofore referred to and quoted from, which recounted the major role

When Congress created the Atomic Energy Commission it knew the contracts of Roane-Anderson and Carbide and Carbon were in existence and that the Atomic Energy plant at Oak Ridge, Tennessee, was being constructed and operated by these independent contractors under the provisions [fol. 80] of said contracts.

The Atomic Energy Act authorized the Commission to perform the work and functions assigned to it by the Act or to have it done by others. The Commission elected to continue the operations at Oak Ridge under the contracts entered into with Roane-Anderson and Carbide and Carbon by the United States Corps of Engineers rather than undertake the performance of the work with its own employees. An explanation for this decision may be found in the Commission's report to the Congress.

The contracts provide that the Government can furnish materials and supplies and pay for them or the contractors made the purchases. Uniformly the contracts entered into by the contractors for the purchase of materials provided that they are "assignable to the United States Government."

The proof indicates that the details of making purchases and transferring personal property to the Government has not always been carried out as provided by the contracts. Nevertheless, the relationship and rights of the parties are determined by the provisions of the contracts and not by the unauthorized acts of their employees.

All purchases involved herein were made by the respective contractors and paid for by them from bank accounts maintained by them as required by these contracts. It is true the money was furnished by the United States Government, but this was done pursuant to the provisions of the contracts.

The contracts provide that Roane-Anderson and Carbide and Carbon shall not pledge the credit of the United States of America.

Very able briefs have been filed by Counsel representing the parties hereto in which a number of questions are discussed, not dealt with in this opinion. However, the Court [fol. 81] is of the opinion that the matters discussed herein are determinative of the issues involved and, therefore, discussion of other questions is deemed unnecessary.

The Tennessee Retailers Sales Tax Act levies a tax on the vendor of personal property for the exercise of the privilege of engaging in the business of making sales in Tennessee and is not a tax upon the sale transactions nor is it a tax on the vendee.

Hooten v. Carson, 186 Tennessee 287.

This decision by the Supreme Court of Tennessee is conclusive and binding.

Erie Railroad Co. v. Thompson, 304 U. S. 69.

Roane-Anderson and Carbide and Carbon and independent contractors engaged in business for profit under cost-plus-fixed-fee contracts with the Atomic Energy Commission and unless a change has been brought about by the enactment of the Atomic Energy Act, complainants are not entitled to the relief sought in these proceedings. The "fee" paid these contractors is not divulged.

Alabama v. King & Boozer, 314 U. S. 1.

Curry v. United States, 314 U. S. 14.

For the reasons stated at length in our opinion in the King & Boozer case we think that the contractors, in purchasing and bringing the building material into the state and in appropriating it to their contract with the Government, were not agents or instrumentalities of the Government; and they are not relieved of the tax, to which they would otherwise be subject, by reason of the fact that they are Government contractors. If the state law lays the tax upon them rather than the individual with whom they enter into a cost-plus contract like the present one, then it affects the Government like the individual, only as the economic burden is shifted to it through operation of the contract. [fol. 82] As pointed out in the opinion in the King and Boozer case, by concession of the Government and on authority, the Constitution, without implementation by congressional legislation, does *does not* prohibit a tax upon Government contractors because its burden passed on economically by the terms of the contract or otherwise as a part of the construction cost to the Government.

Curry v. United States, *supra*.

"The Government, to support its thesis that it was the purchaser, insists that title to the lumber passed to the Government on shipment by the seller, and points to the very extensive control by the Government over all the purchases made by the contractors. It emphasizes the fact that the contract reserves to Government officers the decision of whether to buy and what to buy; that purchases of materials of \$500 or over could be made by the contractors only when approved in advance by the contracting officer; that the Government is reserved the right to approve the price, to furnish the materials itself, if it so elected; and that in the case of the lumber presently involved, the Government inspected and approved the lumber before the shipment. From these circumstances it concludes that the Government was the purchaser. The necessary corollary of its position is that the Government, if a purchaser within the taxing statute, became obligated to pay the purchase price.

"But, however extensively the Government may have reserved the right to restrict or control the action of the contractors in other respects, neither the reservation nor the exercise of that power gave to the contractors the status of agents of the Government to enter into contracts or to [fol. 83] pledge its credit. See *United States v. Algoma Lumber Co.*, 305 U. S. 415, 421, 83 L. ed. 260, 263, 59 S. Ct. 267; *United States v. Driscoll*, 96 U. S. 421, 24 L. ed. 847. It can hardly be said that the contractors were not free to obligate themselves for the purchase of materials ordered. The contract contemplated that they should do so and that the Government should reimburse them for their expenditures. It is equally plain that they did not assume to bind the Government to pay for the lumber by their order, approved by the Contracting Officer, which stipulated that it did not bind or purport to bind the Government. The circumstance that the title to the lumber passed to the Government on delivery does not obligate it to the contractor's vendor under a cost plus contract more than under a lump sum contract, Cf. *James v. Dravo Contracting Co.*, 302 U. S. 134, 82 L. ed. 155, 58 S. Ct. 208, 114 A. L. R. 318, *supra*; *United States v. Driscoll*, *supra*.

"We cannot say that the contractors were not, or that the Government was, bound to pay the purchase price, or that the contractors were not the purchasers on whom the statute lays the tax. The added circumstances that they were bound

by their contract to furnish the purchased material to the Government and entitled to be reimbursed by it for the cost, including the tax, no more results in an infringement of the Government immunity than did the tax laid upon the contractor's gross receipts from the Government in *James v. Dravo Contracting Co.*, 302 U. S. 134, 82 L. ed. 155, 58 S. Ct. 208, 114 A. L. R. 318, *supra*."

Alabama v. King & Boozer, supra.

It is insisted by the complainants and the United States of America that Section 9(b) of the Atomic Energy Act [fol. 84] expressly exempts transactions such as those reflected by the record herein from taxation. The language of the Act relied upon is as follows:

"In order to render financial assistance to those states and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to state and local taxation, the Commission is authorized to make payments to state and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the state or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the state or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities and income of the Commission, are hereby expressly exempted from taxation in any manner form by any state, county, municipality or any subdivision thereof."

A careful study of the language contained in this Section reveals that the Commission is directed to take into consideration the burdens *its activities and the activities of its agents* might cast upon the state and local governments when considering the amount of tax to be paid to those authorities in lieu of property taxes but in the last sentence

quoted above, which grants exemption from taxation, it is [fol. 85] only the Commission, its property, its activities and its income which are "expressly exempt from taxation in any manner or form by any state, county, municipality or any subdivision thereof." It results that the failure of the Congress to use the word "agents" in the last sentence wherein the Commission was exempt from taxation indicates clearly that the Congress did not intend that the Commission's agents or those with whom it deals should also be exempt from taxation.

The Congress has upon numerous occasions expressly refused to exempt contractors engaged in work for the Government under cost-plus-fixed-fee contracts from the burdens of taxing statutes. This point was commented upon in *Alabama v. King & Boozer*, *supra* and also in *Standard Oil Co. v. Fontenot*, 4 So. (2) 637.

It is well established that a fixed policy of the Government will not be changed by presumption. The intention to bring about a change of an established policy must be expressed in apt words and not left to conjecture.

Expressing the same thought, the Supreme Court, in *Robertson v. Railroad Labor Board*, 268 U. S. 618, said:

"It is not lightly to be assumed that Congress intended to depart from a long-established policy."

It will, therefore, not be presumed that the Congress intended to grant exemptions from taxation to private corporations organized for profit engaged in performing work under cost-plus-fixed-fee contracts with the Atomic Energy Commission.

No authority is cited which empowers a governmental agency to convert a corporation engaged in business in its own behalf for profit into an "instrumentality of Government" and thereby extend to it exemptions from taxation. This would be vesting the governmental agency with legislative powers and could work a destruction of the Government. [fol. 86] Consequently, the Court will not presume that it was the intention of the Congress to vest the Commission with the power to select those who should enjoy immunities of taxation by using the word "activities" in Section 9(b) of the Atomic Energy Act.

The bills in these four cases and the intervening petitions will be dismissed, decrees accordingly.

Alfred T. Adams, Special Chancellor.

[fol. 87] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65015

ROANE-ANDERSON COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation, etc.

No. 65164

WILSON-WEESNER-WILKINSON Co.

vs.

SAM K. CARSON, Commissioner of Finance and Taxation, etc.

No. 65014

CARBIDE AND CARBON CHEMICALS CORP.

vs.

SAM K. CARSON, Commissioner of Finance and Taxation, etc.

No. 65163

DIAMOND COAL MINING COMPANY

vs.

SAM K. CARSON, Commissioner of Finance and Taxation, etc.

In Part Two of the Chancery Court of Davidson County,
Tennessee

ADDENDUM TO OPINION—May 25, 1950

Since the opinion was filed in the above cases, it has come to the Court's attention that an erroneous statement of fact is contained therein, to wit:

"The contracts provide that Roane-Anderson and Carbide and Carbon shall not pledge the credit of the United States of America."

This statement is applicable to the Carbide and Carbon contract but the Roane-Anderson contract does not contain this provision.

The Court is of the opinion that this is not determinative of the issues involved and therefore no change than as above stated is made in the opinion so filed.

Alfred T. Adams, Special Chancellor.

[fol. 88] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE AND CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner,

and

No. 65163

DIAMOND COAL MINING COMPANY

and

CARBIDE AND CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, Commissioner

COMPLAINANTS' REQUEST FOR FINDINGS OF FACT—Filed
July 21, 1950

Come the complainants Carbide and Carbon Chemical Corporation and Diamond Coal Mining Company, in the above causes which have been consolidated for trial, and pray that the Court make the following findings of facts:

1. The complainant Carbide and Carbon Chemicals Corporation is a cost-plus-fixed-fee contractor of the United States Atomic Energy Commission operating under Contract W-7405-Eng-26 at Oak Ridge, Tennessee. The complainant Diamond Coal Mining Company is a commercial firm which sold to the Carbide and Chemical Corporation for use by the latter in the performance of its contract with the Atomic Energy Commission.

2. The facts of these cases are developed from the allegations of the complaints which the answers thereto admit or fail to deny and from the depositions taken on December 13 through 15, 1948 and on April 4, 1949, and stipulations agreed to by the parties.

3. The complainant Carbide and Carbon Chemicals Corporation on November 23, 1943, entered into a contract with the United States of America, as an incident to the [fol. 89] prosecution of World War II then in progress, and designated by the parties thereto as Contract W-7405-Eng-26. That contract and the amendments thereto through June 30, 1948 are Exhibits 1, 2 and 19 herein. The scope of work contemplated under said contract was important at that time and remains important at this time in relation to matters of extremely grave concern to the national welfare, security and defense. The complainant Carbide and Carbon Chemicals Corporation promptly entered upon the performance of said contract, has been engaged therein ever since, and is so engaged at the present time.

4. The Act of Congress of August 2, 1946 (Public Law 585-79th Congress, 42 USCA 1801, et seq.), known as the Atomic Energy Act of 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from the Government's agency which had exercised jurisdiction over and supervision of the operations in the area within Roane and Anderson Counties, Tennessee, formerly known as the Clinton Engineer Works and now referred to as Oak Ridge, in which the complainant Carbide and Carbon Chemicals Corporation then and now maintains its offices and carries on its work under said contract.

5. The government agency through which said work had been carried on until the transfer to the Atomic Energy Commission was known as the Manhattan Engineer District of the United States Army Corps of Engineers. Acting pursuant to and in accordance with the provisions of said Act, the President of the United States duly issued Executive Order No. 9816, dated December 31, 1946, which transferred to and made the aforementioned contract, a contract between the Atomic Energy Commission, an agency of the United States of America, and the complainant Carbide and Carbon Chemicals Corporation as of midnight December 31, 1946.

[fol. 90] 6. As a necessary and integral part of the work

under and in the course of action required by said contract, the complainant Carbide and Carbon Chemical Corporation has purchased property of the kind described as being taxable under the Tennessee Retailer's Sales Tax of 1947, and will continue to purchase such property in the performance of its contract.

7. The complainant Carbide and Carbon Chemical Corporation has paid Tennessee sales and use taxes on the purchases of property for use under its contract with the Commission and described as being taxable under said statute. On October 15, 1947, complainant Carbide and Carbon Chemicals Corporation paid to the defendant Sam K. Carson \$2,383.58 which sum was claimed by said defendant to be payable as the "use tax" on purchases by the complainant Carbide and Carbon Chemicals Corporation from outside the State of Tennessee for use under its contract with the Commission for the month of September, 1947. Said tax was paid under protest and involuntarily, and suit to recover same begun within the time provided by law. During November, 1947, the complainant Carbide and Carbon Chemicals Corporation purchased in Tennessee from the complainant Diamond Coal Mining Company several thousand tons of coal for a sales price of \$107,402.23. The complainant Carbide and Carbon Chemicals Corporation paid to the complainant Diamond Coal Mining Company said sales price, together with the sum of \$2,148.08 representing the "sales tax" claimed by the defendant Sam K. Carson, Commissioner of Finance and Taxation, to be due on this purchase, which tax was duly paid by the complainant Diamond Coal Mining Company to said defendant under protest and involuntarily on December 19, 1947, and suit to recover same begun within the time prescribed by law.

8. All of the procurements of property by the complainant Carbide and Carbon Chemicals Corporation asserted to be taxable by the defendant under said Tennessee Sales [fol. 91] Tax statute were purchased solely for use under its contract with the Commission, and were obtained under, and handled through, the same procedures and arrangements as the purchases of said complainant described in the testimony and the exhibits attached. The Carbide and Carbon Chemicals Corporation procedures and forms are shown by Exhibits 3 through 12, and 13 through 18.

9. As the legality of the tax collections here under consideration involve the legal status of the complainant Carbide and Carbon Chemicals Corporation under its contract with the United States Government, this contract and the complainant's operations will be summarized.

10. The Town of Oak Ridge was built for the sole purpose of housing workers necessary for the construction and operation of the Government's plants at Oak Ridge. The Government acquired by purchase or condemnation all of the land, some 59,000 acres, on which the city and the plants were built, although it did not take exclusive jurisdiction thereof. It is stipulated by the parties that all the buildings on the land comprising the area known as the Clinton Engineering Works, including the Town of Oak Ridge, were built for the Government and belong to the Government. (P. 211, following depositions in Carbide case.)

11. By Contract W-7405-ENG-26, as amended from time to time, the Carbide and Carbon Chemicals Corporation contracted with the Government to carry on certain research and experimental work, to provide consultant services, to train personnel to operate certain Government-owned plants; and to operate for the Government said Government-owned plants then being constructed for the production of U-235, or otherwise related to the Atomic Energy program of the Government in Oak Ridge, Tennessee. This was a cost-plus-a-fixed fee contract.

12. As of July 1, 1947, and continuously from that date, Carbide and Carbon has operated for the Commission in [fol. 92] Oak Ridge, all of the Government-owned plants and facilities for the production of fissionable materials; namely, the K-25 plant and the Y-12 plant. Since March 1, 1948 Carbide has also operated the Oak Ridge National Laboratory. The scope of the work carried on in these plants, while not subject to disclosure in detail for security reasons, may be stated generally as encompassing the production of fissionable material for use in military weapons, and the production of radioactive materials for use in peacetime applications of atomic energy in the fields of biology and medicine, for industrial uses, and for many types of research. The Carbide and Carbon Chemical Corporation also carries on in the plants an extensive program of research and development in various phases of the atomic energy field as directed by the Commission.

13. The contract under which these operations are carried on may be described as a management contract whereby Carbide and Carbon Chemicals Corporation provides the personnel and certain technical experience; and the Government provides programs to be carried out. The actual plant operations are carried on under the control of employees of Carbide and Carbon subject to and in accordance with policies and instructions of the Government (Exhibit 1, Article V-A, D, E, F, G, I, testimony, p. 199.) Carbide and Carbon owns none of the real or personal property making up the plants or used in the operation of the plants.

14. The contract provides that in the operation of the plants, Carbide and Carbon shall do all things necessary or convenient "in and about the operation and closing down" of the plants (Exhibit 1, Article V-A, p. 4.) Although the basic facilities are provided by the Government, and the supplies of uranium and certain other materials are furnished from time to time by the Government, operation of these plants includes the securing or purchasing of all the labor, tools, machinery, equipment, supplies and services needed in connection with the plant.

[fol. 93] 15. By this contract the Government agreed to pay Carbide and Carbon its cost of the work plus a fixed fee based on the estimated cost at the time the contract was entered into (Exhibit 1, Article C and VI.) The fixed fee is subject to increase or decrease owing to such changes as the Government might require in the contract, but is not subject to any adjustment in case the actual costs vary from the estimated cost. The contract expressly provides that all the work is to be at the expense of the government; that the Government shall hold Carbide and Carbon harmless against any loss or damage occurring unless due to the wilful misconduct or bad faith of the Company's officers (Exhibit 1, Article VIII-A, Supplement 19); and that Carbide and Carbon is under no obligation to use any of its own funds in the performance of the contract (Exhibit 1, Article VI-D). Carbide and Carbon has not used any of its own funds in the performance of this contract (testimony, p. 100), and all of the costs thereof have been paid from monies advanced by the Government for that purpose (Exhibit 1, Article VI-C), or from revenues received by Carbide and Carbon Chemicals Corporation for the Government's

account and used in reducing the cost of the work (Exhibit 1, Article V, Section 5, and Article IX.)

16. Title to purchased materials for which Carbide and Carbon is entitled to reimbursement vest in the Government in accordance with the contract (Exhibit 1, Article VIII-A, Section 4, Supplement 8), and the purchase orders issued by Carbide (Exhibit 6).

17. Article VIII-D, Section 3 of Exhibit 1 provides that Carbide and Carbon shall make all purchases in its own name and not bind or purport to bind the Government, and that all purchases in excess of \$2,000.00 will be approved by the Government before being made.

[fol. 94] 18. The contract further provides that salaries and expenses of Carbide and Carbon employees to be reimbursable under the contract must be approved by the Government, and certain key personnel may not be employed without prior approval of the Government (Exhibit 1, Article VI-A; Exhibit 19). The Government may require Carbide and Carbon to dismiss from the contract work any employee whom the Government deems to be incompetent, careless, insubordinate, or whose continued employment is considered inimical to the public interest (Exhibit 1, Article VIII-D). All labor disputes, or threatened disputes, must be brought to the attention of the Government (Exhibit 1, Article VIII-N). All patentable discoveries made by Carbide and Carbon or its employees in the performance of the contract must be reported to the Government, which will determine whether same will be patented, and the disposition of title to and any rights under any patent which may result (Exhibit 1, Article VIII-R). All technical data, notes, drawings, designs, and specifications prepared by Carbide and Carbon in the performance of the contract became the property of the Government and will be delivered over to the Government whenever requested (Exhibit 1, Article VIII-Y). The contract provides for the payment of employee benefits for death or injury due to certain hazards peculiar to the Atomic Energy program, when approved by the Government (Exhibit 1, Article VIII-BB, Supplement 22).

19. The raw materials for use in these Government-owned plants is procured and furnished by the Government, and its use carefully and systematically controlled and accounted for under the direction and supervision of the

Government (testimony, p. 197, and Exhibit 20). Certain [fol. 95] other types of property, utilities and services are furnished to the plants by the Government without charge to the contractor (testimony, pages 194, 195, 199-204.)

20. *Method of Reimbursing Costs.* As provided in Article VI-C, Exhibit 1, the Government has advanced to Carbide and Carbon Chemicals Corporation from time to time sufficient monies with which to pay all of the costs incurred by Carbide and Carbon in the performance of the contract. The payment of Carbide's fee has not been made as a part of or from these advances, but is paid directly to Carbide by the Government. The advance of money originally made by the Government was placed in a special bank account upon which Carbide could draw to meet its costs. In order that a specified balance would always be on hand on this account, a procedure was followed whereby Carbide and Carbon would pay for the materials, etc., going into the operations from this account, and in turn submit a voucher on the Government showing how much had been spent. The Government then reimbursed Carbide and Carbon by a like amount, which was in turn deposited to the special bank account. For a description of the reimbursement procedure reference is made to the exhibits filed with the depositions in this case for the purchase of a Brann pulverizer from the Fisher Scientific Company. Carbide and Carbon prepared and placed the purchase order with the vendor (Exhibit 7). The vendor shipped the item ordered and invoiced Carbide and Carbon (Exhibit 8). On receipt, the equipment was checked and a receiving report prepared by an employee of Carbide and Carbon and approved by a representative of the Government (Exhibit 9). Carbide and Carbon then paid the vendor by check drawn on the Hamilton National Bank of Knoxville against Carbide and Carbon's "contract account" (Exhibit 11), and submitted a voucher against the Government (Exhibit 12). When the amount shown on the voucher was paid to Carbide and Carbon, that sum was then deposited [fol. 96] in the "contract account" and used for subsequent purchases.

21. *The special bank account.* The terms and conditions of the advances authorized by the contract are covered in Article VI-C, Exhibit 1. In brief, this article states that the Government may advance to Carbide sums not to exceed

50% of the estimated contract work, without interest. Until all such advances are liquidated, all sums received by Carbide, together with all funds received as reimbursements for contract costs and other revenues received under the contract are to be deposited in a member bank of the Federal Reserve System, or in an insured bank within the meaning of 12 USCA 264) and be maintained separate and distinct from the Carbide and Carbon Chemicals Corporation's own funds. The contract provides:

"Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of the principal contract and any amendments thereto and not for other business of the Contractor."

22. It further provides that the balance on hand in the account shall secure the repayment of the advances, and that the Government shall have a lien upon such balances to secure the repayment, which lien shall be superior to any lien of the bank or any other person.

23. Checks may be drawn on this account by the Contractor, but upon notice by the Government to the Bank, the Carbide and Carbon Chemicals Corporation shall have no right to make further withdrawals. The Bank is required to act upon such notice and shall be under no liability to any party to the contract for any action taken in accordance with such notice.

[fol. 97] 24. On completion or termination of the contract for other than the fault of the contractor, the unliquidated balance of such advances shall be deducted from any payments otherwise due Carbide, and the excess of the unliquidated balance is to be returned to the Government. If the contract is terminated because of the fault of Carbide, the entire unliquidated balance of the advance must be returned to the Government without set-off. At any time during the performance of the contract, if the Government determines the amount in advance is in excess of Carbide's current needs under the contract, it may require Carbide to return the determined excess to the Government.

25. *Procurement of Property.* In operating these wholly-owned Government plants, Carbide and Carbon Chemicals

Corporation purchases a large volume of personal property, both in Tennessee and outside the state, for use in the plants or for the activities it carries on for the Commission. The requests for procurements, such as those involved in these cases and shown as Exhibits 3 through 12, and 13 through 18, originate with employees of the Company directly in charge of specific phases of operations. Orders for requested materials or supplies are placed by the Company through a standard purchase order form (Exhibit 7) and when for more than \$2,000, such purchase orders must be approved by a representative of the Government. When property purchased is received at the Warehouse, employees of Carbide and Carbon Chemicals Corporation inspect and accept the merchandise. Until October, 1948 the Government also made spot checks of materials being received, in which event a Government inspection sheet was prepared and the Government and Carbide and Carbon inspectors countersigned the two reports. Under present procedures, no spot check inspections are made by the Government, although the Government does inspect and approve Carbide and Carbon Chemical Corporation's methods [fol. 98] and organization for receiving and checking incoming materials. On acceptance of the materials by Carbide and Carbon, an appropriate marking is placed, burned, or stamped on the material (if of such a nature that it can be marked) to indicate that it is the property of the Government. The symbol used for this purpose by Carbide and Carbon Chemicals Corporation is the letters "USC & CCC", followed by a number and a prefix letter to show the plant for which the property is intended. The symbol and number placed on the property is assigned at the time the purchase order is prepared, and is affixed on the property at the time of inspection in the warehouse. This marking of property was a requirement of the Army prior to the taking over of these plants by the Commission, and was continued thereafter by the Commission for the purpose of identifying the Government's property (testimony, p. 37-39). The Carbide and Carbon Chemicals Corporation prepares and maintains stock record cards (Exhibit 10) on property so received, and such cards are the records of the Government and the sole property record maintained of materials purchased and used for the contract work. Carbide and Carbon Chemicals Corporation carries no in-

insurance on the property it purchases, either while in transit or after receipt.

26. The Carbide contract provides:

"Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under Article VI-A shall vest in the Government at such point or points as the Contracting Officer may designate in writing; provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided [fol. 99] further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time." (Exhibit 1, Article VIII-A, par. 4, Supp. 8).

27. This provision of the Carbide contract, as previously stated with regard to Roane-Anderson contract, is standard form language used in many types of Government contracts, and its primary use was in situations where the property being procured had to pass through several contractors before delivery to the Government. In the performance of this contract, no point has been designated by the Government as the point at which title would pass (testimony, p. 36, 118), nor have any written acceptances of such property been made, other than the counter-signature by a Government representative on the receiving reports prepared by Carbide and Carbon, as in the case of Roane-Anderson all such receiving reports were countersigned though the property referred to therein was not manually inspected.

28. Article VIII-D, par. 2 of the Carbide contract requires that the Company place contracts for the purchase of materials in its own name, and not bind, or purport to bind the Government. Carbide has included in all of its purchase orders a statement to this effect (Exhibit 7). Carbide's own obligation with respect to such procurement is stated on these purchase orders as follows:

"Carbide and Carbon Chemical Corporation's only liability hereunder shall be to pay for materials or

services ordered hereunder out of funds supplied by the United States Government under Contract W-7405-ENG-26, which has agreed under such contract to supply such funds."

[fol. 100] 29. Upon receipt and acceptance of property purchased, the Carbide and Carbon Chemical Corporation's receiving warehouse delivers the property to the operating division or office of Carbide initiating the original request, or stockpiles the property for general use. Purchases of such items as coal are delivered directly to the coalyard, and thereafter used or consumed in the operation of the plants. At no time after passing through the receiving warehouse is such property inspected by the Government. As stated in the testimony, it was the intent of the Government and Carbide that title to all such property should pass directly from the vendor to the Government, and in fact it was the practice of the Government and Carbide to treat title to such property as having passed directly from the vendor to the Government (testimony pp. 36-39, 102, 140).

30. All Carbide and Carbon Chemical Corporation's procurements were originally shipped on or converted to Government Bills of Lading. While this practice has been discontinued, no changes have been made in the Carbide procurement forms and procedures followed in purchasing materials for these Government-owned plants. The purchases of coal by Carbide from the Diamond Coal Mining Company, shown as Exhibit 14, were converted from a commercial Bill of Lading to a Government Bill of Lading, and the cost of transportation paid by the Government to the carrier (Exhibit 22, 23, 24, 25).

S. Frank Fowler, Solicitor for Complainants, 1412
Hamilton Bank Building, Knoxville, Tennessee.

July 21, 1950.

[fol. 101] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE & CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, COMMISSIONER

and

No. 65163

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICAL CORPORATION

VS.

SAM K. CARSON, COMMISSIONER

DEFENDANT'S REQUEST FOR FINDINGS OF FACT—Filed August
10 1950.

Comes the defendant James Clarence Eyans, Commissioner of Finance and Taxation of Tennessee, in the above causes which have been consolidated for trial, and prays that the court make the following findings of fact:

1. That complainant Carbide and Carbon Chemical Corporation is a private, profit type New York corporation, domesticated in Tennessee, and is a cost-plus-fixed-fee contractor with the United States Atomic Energy Commission operating under contract W-7405-ENG-26 at Oak Ridge, Tennessee. The complainant Diamond Coal Mining Company is a private, profit type Delaware Corporation domesticated in Tennessee, and is a commercial firm which sold coal to the Carbide and Carbon Chemical Corporation for use by the latter in the performance of said contract with the Atomic Energy Commission.

2. The facts of these cases are developed from the allegations of the original bills which the answers thereto admit or fail to deny, the depositions taken and filed in the cause, the exhibits thereto, the stipulations of fact made by the parties, and from the public documents filed in the cause by complainants and the intervenors, and all such facts and [fol. 102] matters as the court is required to judicially take knowledge of.

3. The complainant Carbide and Carbon Chemical Corporation entered into a contract with the United States of America on November 23, 1943, as an incident to the prosecution of World War II then in progress. The contract was designated by the parties as contract W-7405-ENG-26. Said contract was entered into pursuant to the War Powers Act, Public Law 354, 77th Congress, which authorized the President of the United States, for the better utilization of resources and industries, to authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, to enter into contracts and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making of contracts generally, whenever the President deemed such action would facilitate the prosecution of the war. Said War Powers Act provided further that such contracts should be a matter of public record under regulations prescribed by the President. By Presidential Executive Order No. 9001, the President authorized the Army and Navy to enter into contracts necessary for the prosecution of the war, and in said Executive Order authorized the Army and Navy by Title 2, Section 4, of said Executive Order, to make advance payments to such contractors. The contract, and the amendments thereto through June 30, 1947, are Exhibits 1, 2 and 19 herein. The scope of the work contemplated under said contract was important at that time and remains important at this time in relation to matters of extremely grave concern to the national welfare and security defense. The complainant Carbide and Carbon Chemical Corporation promptly entered upon the performance of said contract, and has been engaged therein ever since.

[fol. 103] 4. The Act of Congress of August 2, 1946 (Public Law 585—79th Congress, 42 USCA 1801, et seq.); known as the Atomic Energy Act of 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, etc., from the Government's agency which had exercised jurisdiction over and supervision of the operations in the area within Roane and Anderson Counties, Tennessee, formerly known as the Clinton Engineer Works and now referred to as Oak Ridge, in which the complainant Carbide and Carbon Chemical Corporation then and now maintains its offices and carries on its work under said contract.

5. The Governmental agency through which said work had been carried on until the transfer to the Atomic Energy Commission was known as the Manhattan Engineer District of the United States Army Corps of Engineers. Acting pursuant to and in accordance with the provisions of said Act, the President of the United States duly issued Executive Order No. 9816, dated December 31, 1946, which transferred to and made the aforementioned contract, a contract between the Atomic Energy Commission, an agency of the United States of America, and the complainant Carbide and Carbon Chemical Corporation as of midnight, December 31, 1946.

6. As a necessary and integral part of the work under and in the course of action required by said contract, the complainant Carbide and Carbon Chemical Corporation has purchased property of the kind described as being taxable under the Tennessee Retailer's Sales Tax Act of 1947 and will continue to purchase such property in the performance of its contract.

7. The complainant Carbide and Carbon Chemical Corporation has paid Tennessee use taxes on the purchases of property for use under its contract with the Commission and [fol. 104] described as being subject to the use tax under said statute. It has also paid as a part of the purchase price of tangible personal property amounts equal to the tax levied against vendors of such property for the privilege of engaging in the business of making sales thereof in Tennessee. On October 15, 1947, complainant Carbide and Carbon paid to defendant Sam K. Carson, then Commissioner of Finance and Taxation of Tennessee, \$2,383.58, which sum was claimed by said defendant to be payable as the use tax on purchases by complainant Carbide and Carbon Chemical Corporation from out-of-state vendors for use under its contract with the Commission for the month of September, 1947. Said tax was paid under protest and involuntarily and suit to recover same was begun within the time provided by law. During November, 1947, the complainant Diamond Coal Mining Company in the course of business sold to complainant Carbide and Carbon, several thousand pounds of coal for a total sales price of \$109,550.31, which price included the sum of \$2,148.08, required to be added as a part of the sale price of said coal by the Tennessee Retailer's Sales Tax Act, the sales transaction taking place in Ten-

nessee when complainant Diamond Coal Mining Company paid the tax provided by the sales tax on its gross sales in Tennessee, it paid \$2,148.08 as a tax for the privilege of engaging in the business of making sales of coal to complainant Carbide and Carbon Chemical Corporation. This amount was paid under protest and involuntarily on December 19, 1947, and suit to recover the same was commenced within the time prescribed by law.

8. All of the procurements of property by the complainant Carbide and Carbon Chemical Corporation asserted to be taxable by the defendant under said Tennessee Sales Tax Statute were purchased solely for use under its contract [fol. 105] with the Commission, and were obtained under, and handled through the same procedures and arrangements as the purchases of said complainant described in the testimony and the exhibits attached. The Carbide and Carbon Chemical Corporation procedures and forms are shown by Exhibits 3 through 12, and 13 through 18.

9. The Town of Oak Ridge was built for the sole purpose of housing workers necessary for the construction and operation of the Government's plants at Oak Ridge. The Government acquired by purchase or condemnation all of the land, some 59,000 acres, on which the city and the plants were built, although it did not take exclusive jurisdiction thereof. It is stipulated by the parties that all the buildings on the land comprising the area known as the Clinton Engineering Works, including the Town of Oak Ridge, were built for the Government and belong to the Government. (p. 211, following depositions in Carbide case.)

10. By contract W-7405-ENG-26, as amended from time to time, the Carbide and Carbon Chemical Corporation contracted with the Government to make research, doing experimental work, to furnish consultant services, to train its own personnel to enable it to operate certain Government-owned plants, and to operate said Government-owned plants and to produce specified quantities of a material then referred to as K-25 but now commonly referred to as U-235. Said contract provides in part, with respect to this subject as follows:

"TITLE V—Operation of Plant

"ARTICLE V-A—Statement of Work

"1. Prior to the placing of the Plant in readiness for operation in whole or in part, the Contractor shall

perform all organization services in connection with the planning of, and the making of all necessary preparations for, operation of the Plant, and shall perform [fol. 106] all other services incident to setting up an efficient and going operating force.

"2. When the Plant is ready for operation in whole or in-part, the Contracting Officer shall notify the Contractor in writing. The Contractor shall thereupon proceed to exert its best efforts to maintain the Plant and to operate the Plant for the production of Product K-25 for the remaining period of this contract. During such period of operation, the Government shall have the right to require the Contractor to produce any amount of Product K-25 which Contractor by exerting its best efforts is able to produce with the then existing facilities of the Plant. The Contractor shall, if and to the extent requested by the Contracting Officer, re-work material produced in the Plant which does not meet specifications.

"4. In carrying out the work under this Title V, the Contractor is authorized to do all things necessary or convenient in and about the operation and closing down of the plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control of and shall constitute employees of the Contractor).

"5. The Government reserves the right, upon so notifying the Contractor prior to any commitment by the latter therefor, to furnish any materials necessary for the operation of the Plant. In the operation of the Plant, the Contractor shall be free (but shall not be obligated) to use any materials of its own manufacture upon advising the Government in advance as to the price at which and the conditions upon which such materials will be supplied. In the event the Government is able to obtain material of equal quality and [fol. 107] quantity at a lower price or on more favorable conditions from any reasonable competitive source or from its own manufacture, it may undertake to do so upon informing the Contractor within ten (10) days after being advised of the Contractor's price for such material.

"6. The work shall be executed in the best and most workmanlike manner by qualified, careful and efficient workers, in strict conformity with the best standard practices."

(Title V—Article V-A)

11. As of July 1, 1947, and continuously from that date, complainant Carbide and Carbon Chemical Corporation has operated all of the Government-owned plants and facilities located at Oak Ridge, namely the K-25 plant and the Y-12 plant, producing specified quantities of U-235. Since March 1, 1948, Carbide and Carbon has also operated the Oak Ridge National Laboratory. All of said operations have been pursuant to the written specifications and provisions of the contract between the parties.

12. The contract under which these operations are carried on is an independent contractor contract whereby Carbide and Carbon Chemical Corporation contracts to provide the personnel and technical experience, and to produce specified quantities of fissionable material, while the Government provides the facilities and the money necessary to said operation. By an Act of Congress, the President of the United States fixes the amount of fissionable material to be manufactured annually, and Carbide and Carbon, under its contract, undertakes to produce the portion of said output which is allotted to it. All plant operations are carried on by and are under the control of Carbide and Carbon Chemical Corporation, subject to and in accordance with the contract with the United States. Said contract has been [fol. 108] characterized by Carroll L. Wilson, General Manager, Atomic Energy Commission, in a statement submitted to the Congressional Committee on Atomic Energy on Thursday, February 17, 1949, as follows:

"The joint committee has requested that a part of this afternoon's hearing be devoted to a discussion of the Commission's contract procedures and practices. The Commission welcomes this opportunity for such a discussion. As you know, we have from time to time in our reports to the Congress as well as in other published statements, referred to the central role which contractors occupy in the atomic energy program. We believe that it is important for the public generally and for the American business to know and to understand the policies which we are following.

"It will be helpful, I think, to begin by stating in somewhat general terms the Commission's view on the manner in which a major part of its business should be conducted.

"The Atomic Energy Act of 1946 left it to the Commission to determine, in the light of experience and prevailing circumstances in each case, whether its installation should be directly operated by the Commission or whether they should be operated by private contracts or organizations in accordance with the practice which had been initiated by the Manhattan District.

"The Commission has been of the view and we believe this view is amply supported by our two years of experience since we succeeded to the responsibility of the atomic energy enterprise that we should develop as fully as possible the method of operating through contractual relations with private organizations. We have recognized that the high relative significance of [fol. 109] weapon production and the necessary secrecy of large parts of the atomic energy program involve the danger that only limited scientific, technical, and managerial resource will be available to this most urgent new atomic enterprise. Such handicaps must be minimized and overcome if this country's rapid progress in the field of atomic energy is to be assured. Accordingly, the Commission has looked to the basis policy of contractor operation as a means of developing wide and alert participation in the program by a growing number of private organizations, both academic and industrial.

"By pursuing a basic policy of obtaining contractor-operators the Commission has been able to draw upon the technical and administrative talents of a broad section of the American economy. Operation of our plants and laboratories through established independent contractors not only gives to the atomic energy program substantial benefits from accumulated experience and established facilities; it also enlists the interest and the support of industry and universities for future private development. It has been our conviction that if atomic energy is to become a generic part of the American scene it should have its roots deep in the institutions which are so productive a part of American

progress in science and technology. The identities of the contractor-operators at the Commission's major facilities are of course well known to the members of the joint committee. At Oak Ridge the production and the laboratory facilities are operated by the Carbide and Carbon Chemical Corporation, while the Roane-Anderson Co. is the principal contractor for town operations." (P. 47 of "Los Alamos Retrocession Bill and AEC Contract Policy Hearings Before the Joint Committee on Atomic Energy, Congress of the United States, Eighty-First Congress, First Session of Los Alamos Retrocession Bill and AEC Contract Policy, [fol. 110] February 17, 21, and 24, 1949.")

13. Although the basic facilities for the manufacture of K-25 are provided by the Government, and supplies of uranium and certain other materials are furnished from time to time by the Government, the operation of these plants by Carbide and Carbon includes the securing or purchasing by Carbide and Carbon, in its own name, of all the labor, tools, machinery, equipment, supplies, and services needed to perform the work contracted to be done.

14. By this contract the Government agreed to pay Carbide and Carbon its cost of the work plus a fixed fee based on the estimated cost at the time the contract was entered into (Exhibit 1, Article V, and VI). The fixed-fee is subject to increase or decrease owing to such changes as the Government might require in the contract, but is not subject to any adjustment in case the actual costs vary from the estimated cost. The contract provides that Carbide and Carbon shall do all the work at the expense of the Government; that Carbide and Carbon shall be held harmless against any loss or damage occurring unless due to wilful misconduct or bad faith of the Company's officers (Exhibit 1, Article VIII-A, Supplement 19); and that Carbide and Carbon is under no obligation to pay any of its own funds in the performance of the contract (Exhibit 1, Article VI-D). Carbide and Carbon has not used any of its own funds in the performance of this contract (testimony, p. 100), and all of the costs thereof have been paid from monies advanced by the Government for that purpose (Exhibit 1, Article VI-C), or from revenues received by Carbide and Carbon Chemical Corporation for the Government's account and used in reducing the cost of the work (Exhibit 1, Article V, Section 5, and Article IX.)

15. Title to purchased materials for which Carbide and Carbon is entitled to reimbursement vest in accordance with [fol. 111] the contract (Exhibit 1, Article VIII-A, Section 4, Supplement 8). Said contract provision is as follows:

"4. Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under Article VI-A shall vest in the Government at such point or points as the Contracting Officer may designate in writing; provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time."

16. Article VIII-D, Section 3 of Exhibit 1, provides:

"3. Unless this provision is waived in writing by the Contracting Officer, reduce to writing every contract in excess of two thousand dollars (\$2,000.00) made by it for the purpose of the work hereunder for services (except for electric power, which contract shall be in the name of the Government, not the Contractor,) materials, supplies, machinery, or equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchases in excess of two thousand dollars (\$2,000.00) shall be made or placed without the approval of the Contracting Officer."

17. The contract further provides that salaries and expenses of Carbide and Carbon employees to be reimbursable under the contract, must be according to an approved schedule and key personnel may not be employed without prior [fol. 112] approval of the Government (Exhibit 1, Article VI-A, Exhibit 19). The Government may require Carbide and Carbon to dismiss from the contract work any employee whom the Government deems to be incompetent, careless, insubordinate, or whose continued employment is con-

sidered inimical to the public interest (Exhibit 1, Article VIII-D). All labor disputes, or threatened disputes, must be brought to the attention of the Government (Exhibit 1, Article VIII-N). All patentable discoveries made by Carbide and Carbon or its employees in the performance of the contract must be reported to the Government, which will determine whether same will be patented, and the disposition of title in any rights under any patent which may result (Exhibit 1, Article VIII-R). Government contracts to hold Carbide and Carbon harmless for patent infringement. All technical data, notes, drawings, designs, and specifications prepared by Carbide and Carbon in the performance of the contract become the property of the Government, and will be delivered over to the Government whenever requested (Exhibit 1, Article VIII-Y). The contract provides for the payment of employee benefits for death or injury due to certain hazards peculiar to the Atomic Energy program, when approved by the Government (Exhibit 1, Article VIII-BB, Supplement 22.)

18. The raw material for use by the Contractor is procured and furnished by the Government. The contract provision covering this subject, found in Title VIII, Article VIII-V, reads as follows:

"Article VIII-V. (a) 'The Government shall deliver to the contractor at the plant for use in the manufacture of Product K-25 all raw materials needed for such manufacture, without cost to the Contractor.'"

19. *Payments.* The subject of payment under the contract is covered by Article VI-B of Title VI of the contract. This article provides in substance that the Government will [fol. 113] currently reimburse the contractor for expenditures upon certification to and verification by the Contracting Officer of the original signed payrolls for labor, the receipted invoices for materials, and such other documents as the Contracting Officer may require. Provision is made to pay the fixed fee in monthly installments. It is provided that if the bills for the purchase of materials, machinery or equipment or payrolls are not paid promptly by the contractor or the subcontractor, as the case may be, the Contracting Officer may in its discretion withhold from payments otherwise due amounts equivalent to the amounts of such unpaid items. Said Article provides by Section 4,

thereof that upon completion of the work to be performed under the contract and its final acceptance in writing by the Contracting Officer, that the Government shall pay the contractor the unpaid balance of the cost of the work and the balance of the fixed fee, less any sum necessary to settle claims against the contractor. Said contract provides: "The Contracting Officer shall accept the completed work hereunder with reasonable promptness."

20. *Advance Payments.* The subject of advance payments by the Government to the Contractor is dealt with by contract Article VI-C. This Article authorizes the Government at the request of the contractor to make advance payments to the contractor, within certain limitations expressed in said Article. This provision for advance payments was authorized by the first War Powers Act 1941 (Public Law 354—77th Congress) in the following language:

"Sec. 201. The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President [fol. 114] for the protection of the interest of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war."

(Title II, Contracts, Sec. 201.)

(Public Law 354—77th Congress, First Session.)

The first provisions for the making of advance payments was by supplemental contract, dated 18th day of January, 1943, to the letter contract of the same date whereby Carbide and Carbon and the United States Government first entered into contractual relationship with respect to the operations at Oak Ridge. There is nothing about this provision for advance payments and the method of accounting for such advance payments which indicates that it is different from the contract method employed by the War De-

partment in the case of other cost-plus-a-fixed-fee contractors with the War Department. And, the fact that the provision for advance payments in this contract is made pursuant to the same statutory authorization which permits advance payments to be made in all war prosecution contracts indicates that the legal effect of such a contract provision in one case is no different from what it would be in any other case. Said Article VI-C, Advance Payments, provides in addition to the provision just referred to, as follows: That the Contract may be required to furnish security for the advance payments; that such advance payments shall be deposited in a special bank account at a member bank of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation; *that said funds be kept separate from the contractor's own or other funds*; that the bank account be designated so as to indicate to the bank [fol. 115] its special character; that the balance in the account is to be used by the contractor as a revolving fund for carrying out the contract and not for the contractor's other business; that the balance on deposit shall secure the repayment of the advances made and the Government to have a lien upon such balance to secure the repayment of such advances; provided that the bank, upon receipt of notice from the contracting party shall act on such notice and desist in making payments from said account; that if the aggregate of the advance payments made, together with funds paid as reimbursement shall exceed the total estimated cost of the work under the contract, such excess shall immediately be paid by the contractor to the Government, or if any reimbursement is due from the Government to the contractor, such excess shall be deducted therefrom. Said Article contains other provisions which are applicable upon completion of the contract or upon termination thereof which it is not necessary to refer to here. Notice, however, should be taken to Section 7 of Article VI-C which authorizes the contractor, with the approval of the Contracting Officer, to make advance payments to subcontractors and material men on the same terms and conditions applicable to the advance payments to Carbide and Carbon Chemical Corporation. The Complainant Carbide and Carbon and the Government have followed the procedure prescribed by statute with respect to such advance payments, except that

it does not appear from the record whether security for such advance payments has been furnished by Carbide and Carbon. In order that a specific balance should always be on hand in the special account, a procedure was followed whereby Carbide and Carbon would pay for materials, etc., from this account and in turn submit a voucher to the Government showing how much had been spent, whereupon the [fol. 116] Government would reimburse Carbide and Carbon by a like amount, which in turn would be deposited to the special bank account. For a description of the reimbursement procedure, reference is made to the exhibits filed with the depositions in this case for the purchase of a Braun pulverizer from the Fisher Scientific Company. Carbide and Carbon prepared and placed the purchase order with the vendor (Exhibit 7). The vendor shipped the item ordered and invoiced Carbide and Carbon (Exhibit 8). On receipt, the equipment was checked and a receiving report prepared by an employee of Carbide and Carbon and approved by a representative of the Government. (Exhibit 9). Carbide and Carbon then paid the vendor by check drawn on the Hamilton National Bank of Knoxville against Carbide and Carbon's "contract account" (Exhibit 11), and submitted a voucher against the Government (Exhibit 12). When the amount shown on the voucher was paid to Carbide and Carbon, that sum was then deposited in the "contract account" and used for subsequent purchases.

21. *Procurement of Property.* In doing the work contracted to be done, Carbide and Carbon purchases a large volume of tangible personal property both in and outside of Tennessee. Requests for procurements, such as those involved in these cases and shown as Exhibits 3 through 12, and 13 through 18, originate with employees of the Company directly in charge of specific phases of operations. Orders for requested materials or supplies are placed by the Company through a standard purchase order form (Exhibit 7) and when for more than \$2,000, such purchase orders must be approved by a representative of the Government. When property purchased is received at the warehouse, employees of Carbide and Carbon Chemical Corporation inspect and accept the merchandise. Until October, 1948 the Government also made spot checks of materials being received—in which event a Government inspection sheet was prepared, and the Government and Carbide and Carbon inspectors

[fol. 117] countersigned the two reports. Under present procedures no spot check inspections are made by the Government, although the Government does inspect and approve Carbide and Carbon Chemical Corporation's methods and organization for receiving and checking incoming materials. On acceptance of the materials by Carbide and Carbon, an appropriate marking is placed, burned or stamped on the material (if of such a nature that it can be marked) to indicate that it is the property of the Government in the possession of Carbide and Carbon under its contract. The symbol used for this purpose by Carbide and Carbon Chemical Corporation is the letters "USC & CCC", followed by a number and a prefix letter to show the plant for which the property is intended. The symbol and number placed on the property is assigned at the time the purchase order is prepared, and is affixed on the property at the time of inspection in the warehouse. This marking of property was a requirement of the Army prior to the taking over of these plants by the Commission, and was continued thereafter by the Commission for the purpose of identifying the Government's property (testimony, p. 37-39). The Carbide and Carbon Chemical Corporation prepares and maintains stock record cards (Exhibit 10) on the property so received, and such cards are the records of the Government and the sole property record maintained of materials purchased and used for the contract work. Carbide and Carbon Chemical Corporation carries no insurance on the property it purchases, either while in transit or after receipt.

22. With reference to Article VIII-A, Section 4, Supplement 8, which has already been set forth verbatim in Section 15, page 11 hereof, it appears that the Government has not designated any point at which title shall vest in the Government, nor has the Government through the Contracting [fol. 118] Officer ever designated in writing any final acceptance or rejection of materials, tools, machinery, equipment and supplies purchased by the contractor, other than the countersignature of a Government representative on the receiving reports prepared by Carbide and Carbon Chemicals Corporation, which countersignatures were not placed on said reports with the intention of complying with Article VIII-A, Section 4, Supplement 8.

23. Article VIII-D, Section 3 provides as follows:

"3. Unless this provision is waived in writing by the Contracting Officer, reduce to writing every contract in excess of two thousand dollars (\$2,000.00) made by it for the purpose of the work hereunder for services (except for electric power, which contract shall be in the name of the Government, not the Contractor), materials, supplies, machinery, or equipment, or for the use thereof, insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchase in excess of two thousand dollars (\$2,000.00) shall be made or placed without approval of the Contracting Officer."

Pursuant to said contract provision the purchase order form used by Carbide and Carbon contains the following language.

"This Order is placed for the benefit of, and is assignable to, the United States Government. Carbide and Carbon Chemical Corporation's only liability hereunder shall be to pay for material or services ordered hereunder out of funds supplied by the United States Government under Contract S-7405-ENG-26, which has agreed under such contract — supply such funds. In the event of assignment to and acceptance by the Government [fol. 119] eminent for payment under this Order. This Order does not bind or purport to bind the United States Government."

(Carbide and Carbon, Exhibit #7.)

24. Upon receipt and acceptance of property purchased, the Carbide and Carbon Chemical Corporation's receiving warehouse delivers the property to the operating division or office of Carbide initiating the original request, or stockpiles the property for general use. Purchases of such items as coal are delivered directly to the coal yard, and thereafter used or consumed in the operation of the plants. At no time after passing through the receiving warehouse is such property inspected by the Government. The intent of the Government and Carbide and Carbon with respect

to the title to all such property is expressed in the contract and evidence of witnesses to the contrary, while considered by the Court, is not deemed to be controlling. Under the contract, title vests on purchase and delivery in Carbide and Carbon Chemical Corporation which purchases the materials and supplies in its own name with funds paid to it by the Government as advance payments on the contract.

25. From December, 1942 until October, 1946, all of the materials, supplies and machinery purchased by Carbide and Carbon Chemical Corporation were shipped on an ordinary bill of lading, in order that land grant freight rates might be made applicable to such shipments. In October, 1946 by Act of Congress, land grant freight rates were abolished. From October, 1946 until May 12, 1948, the practice of converting to Government bills of lading was continued for the purpose of avoiding the 3% Federal transportation tax. After May, 1948 there was no conversion to Government bills of lading except when the shipment was to the Government on a Government purchase order, and Carbide and Carbon pays 3% Federal transportation tax on all shipments to it.

[fol. 120] 26. *Term and Termination of Contract.* Title VII covers the term of the contract and sets forth provisions for the termination of the same. The term of the contract as originally entered into was for a period commencing January 18, 1943, and ending six months after the termination of hostilities with the Axis Powers. Power to terminate at any time was reserved to the Government. The term of the contract has been extended from time to time by supplemental agreements thereto, all of which are set forth in the supplement exhibited to the contract (Exhibit 1). Section 2 of Title VII provides:

"2. If this contract is terminated by the Government for the fault of the contractor, the Contracting Officer may enter upon the site of the plant and take possession, for the purpose of completing the work contemplated by this contract, of any or all materials, tools, machinery, equipment and appliances at the site of the Plant which may be owned by or in the possession of the Contractor and all options, privileges, and rights, and may complete or employ any other person or persons to complete said work."

27. Title VIII of the contract, which covers general provisions applying to the whole of the contract, contains among other things, a provision covering "Records and Accounts, Inspection and Audit." Section 1 under Article VIII-C provides as follows: }

"1. The Contractor agrees to keep records and books of account showing the actual cost to it of all items of labor, materials, equipment, supplies, services and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

[fol. 121] "2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article VI-C hereof, and shall at all times have access to the premises, work, and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memorandum of every description of the Contractor pertaining to said work; and the contractor shall, except such original and other documents as are submitted in support of reimbursement vouchers, preserve for a period of three (3) years after completion or termination of this contract, all the books, records and other papers herein mentioned.

28. *Special Requirements.* Article VIII-D, of Title 8 sets forth certain special requirements made of the contractor. Section 2 of Article VIII-D reads as follows:

"2. Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations and ordinances and other rules of the United States of America, of the state, territory or subdivision thereof wherein the work is done, or of any other duly constituted public authority."

29. Although the purchase order provides that the same is assignable to the United States Government, by a provision thereof which is set forth in full in Item 23 hereof, assignment of such purchase orders has never been made.

nor has the property acquired under the orders been assigned.

30. The Atomic Energy Commission, although authorized to do so by Section 9(b) of the Atomic Energy Act, has never made any payments to the state and local governments in lieu of property taxes.

[fol. 122] 31. The contracts provide that the Government can furnish materials and supplies and pay for them or the contractors can make purchases and the Government will reimburse the contractors. In the transactions involved herein the contractors made the purchases. Uniformly, the contracts entered into by the contractors for the purchase of materials provided that they are "assignable to the United States Government."

32. The proof indicates that the details of making purchases and transferring personal property to the Government has not always been carried out as provided in the contracts. Nevertheless, the relationship and rights of the parties are determined by the provisions of the contracts and not by the unauthorized acts of their employees.

33. All purchases involved herein were made by the respective contractors and paid for by them from bank accounts maintained by them as required by these contracts. It is true the money was furnished by the United States Government, but this was done pursuant to the provisions of the contracts.

34. With further reference to Article VIII-A, Section 4, Supplement 8 of the contract, which has heretofore been set forth in Item 15 of this finding of fact, no point has ever been designated by the Government as the point at which title passes, nor has any written notice of acceptance or rejection, as the case may be, been given by the Contracting Officer, with respect to the materials, tools, machinery, equipment and supplies which the contractor purchases, as contemplated by said Article VIII-A, Section 4, Supplement 8.

Allison B. Humphreys, Jr., Advocate General,
Solicitor for Defendant.

[fol. 123] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE AND CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner

and

No. 65163

DIAMOND COAL MINING COMPANY and CARBIDE AND CARBON
CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner

DECREE—August 17, 1950

This cause was heard on the 17th day of August, 1950 before Alfred T. Adams, Special Chancellor, upon the entire record and more particularly upon the motion of complainants and defendant for the Court to make findings of fact and the written request for findings of fact filed herein on July 21, 1950, by complainants and the written request for findings of fact filed herein on August 10, 1950 by the defendant, from the consideration of all of which the Court doth order, adjudge and decree that it adopts as its findings of fact the findings of fact as set forth in the written request filed herein by the defendant on August 10, 1950, and it is further ordered by the Court that said findings of fact be made a part of this decree.

Alfred T. Adams, Special Chancellor.

[fol. 124] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE & CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner, etc.

FINAL DECREE—August 29, 1950

Be it remembered that this cause came on to be heard on the 29th day of August, 1950, and former days before Alfred T. Adams, Special Chancellor, sitting by election of the Bar of Davidson County, Tennessee, in the place and stead of Honorable William J. Wade, Chancellor, who was unable to attend court on account of illness, on the original bill and the exhibits thereto, including Contract No. W-7405-ENG-26, dated November 23, 1943, entered into between complainant Carbide and Carbon Chemical Corporation and the United States of America, together with all amendments to said contract through the 12th day of September 1949; the answer of defendant; the depositions of witnesses and exhibits thereto; the intervening petition of the United States of America; and the entire record in said cause and upon consideration of all of which the Court finds, in addition to certain other findings of fact heretofore made, as follows:

That the contract No. W-7405-ENG-26, entered into between complainant Carbide and Carbon Chemical Corporation and the United States of America on November 23, 1943, together with all the amendments thereto, is an independent contractor of the cost-plus-a-fixed-fee type and created the relationship of employer and independent contractor between the United States of America and complainant Carbide and Carbon Chemical Corporation. That the character of the relationship was not changed by Executive Order #9816 of the United States effective December 31, 1946, whereby the supervision of the discharge of said contract was transferred to the Atomic Energy Commission. That, as an independent contractor with the United States of America, whose contract is under the supervision of the Atomic Energy Commission, complainant is not exempt from the Use Tax levied by Chapter 3 of the Public Acts of the General Assembly of Tennessee

for the year 1947 by reason of implied constitutional immunity of Federal Agencies nor for any of the reasons claimed in the original bill. That Section 9(b) of the Atomic Energy Act of 1946, as amended, does not exempt complainant from the payment of the Use Tax levied by Chapter 3 of the Public Acts of the General Assembly of Tennessee for the year 1947. That the allegations of the original bill are fully met and overcome by the defenses raised by the answer and established at the hearing, and the original bill should be dismissed at the cost of the complainant. That the intervening petition of the intervenor, the United States of America, which has been fully considered, should, likewise, be dismissed but without cost to the intervenor.

It is accordingly ordered, adjudged and decreed for the reasons stated in the opinion of the Court filed herein and authenticated by the signature of the Special Chancellor, which is ordered made a part of the record herein and on the findings of fact made by the Court, that complainant's original bill be and the same is hereby dismissed at the cost of complainant, for which execution may issue. The intervening petition of the intervenor United States of America, is likewise dismissed but without cost.

The copies of the public documents here listed which were delivered to the Court by complainant of which judicial notice was taken, are ordered filed and made a part of the record.

[fol. 126] Hearings before the Committee on Military Affairs—House of Representatives—Seventy-Ninth Congress, First Session on H. R. 4280, October 9 and 18, 1945.

Hearings before the Special Committee on Atomic Energy United States Senate—Seventy-Ninth Congress First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearing before the Joint Committee on Atomic Energy—Congress of the United States—Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96—80th Congress, 1st Session. Letter from the Chairman and Members of the United States Atomic Energy Commission.

Report No. 1211—79th Congress, 2nd Session, Senate. Atomic Energy Act of 1946.

Report No. 1186, 79th Congress, 1st Session—House of Representatives—Atomic Energy Act of 1945, and Part 2 of Report No. 1186.

To the action of the Court in dismissing complainant's original bill and taxing it with the cost, and in dismissing the intervening petition of the United States of America, and to the findings of fact made, and all adverse action taken, both complainant and the intervenor except and pray an appeal to the next term of the Supreme Court of Tennessee sitting at Nashville, which appeal is granted to the [fol. 127] intervenor United States of America, without condition, but is granted to the complainant Carbide and Carbon Chemical Corporation only on condition that within thirty days it execute and file with the Clerk and Master an appeal bond in the amount of \$250.00, conditioned as provided by law. It is ordered that all exhibits on file in this cause, including the public documents listed above, shall be sent up to the Supreme Court in original form in event appeal is perfected.

Enter: Alfred T. Adams, Special Chancellor.

[fol. 128] Bond on Appeal for \$250.00 omitted in printing.

[fol. 129] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65163

DIAMOND COAL MINING COMPANY, a Delaware Corporation
Qualified to Do Business in the State of Tennessee, and
Carbide and Carbon Chemical Corporation, a New York
Corporation, Qualified to Do Business in the State of
Tennessee, Complainants,

vs.

SAM K. CARSON, Commissioner of Finance and Taxation of
the State of Tennessee with Office at Nashville, Tennes-
see, and Individually a Citizen and Resident of Davidson
County, Tennessee, Defendant

ORIGINAL BILL—Filed January 19, 1948

The complainants Diamond Coal Mining Company and
Carbide and Carbon Chemical Corporation show to the
Court the following facts:

I

The complainant Diamond Coal Mining Company is a
corporation duly organized and existing under the laws of
the State of Delaware and qualified under the laws of the
State of Tennessee to do business within the latter State
and doing business therein with its principal office in Camp-
bell County, Tennessee.

The complainant Carbide and Carbon Chemical Corpora-
tion is a corporation duly organized and existing under the
laws of the State of New York and qualified under the laws
of the State of Tennessee to do business within the latter
State and doing business therein with its principal office in
Roane County, Tennessee.

The defendant Sam K. Carson is the duly appointed and
acting Commissioner of Finance and Taxation of the State
[fol. 130] of Tennessee and as such was and is charged with
the collection of all taxes under the Act of the General As-
sembly of the State of Tennessee known generally as Ten-
nessee Retailer's Sales Tax, being Chapter No. 3 of the
Public Acts of the year 1947 of the General Assembly of
Tennessee; and said defendant promptly entered upon the
discharge of his responsibility as collecting officer under
said Act and the payments hereinafter described were made
to him and received by him in his said capacity.

This is a suit brought to recover certain amounts asserted by said defendant to be due from the complainants under the said Tennessee statutes, which amounts the defendant compelled the complainant Diamond Coal Mining Company to pay, although requirement of payment thereof was illegal, complainants not being liable for said tax. The said statute requires the tax to be paid by the 20th day of each month, and this suit is brought for the further purpose of obtaining the adjudication of this Court that said statute and the tax levied thereby do not apply to the complainants in respect to transactions hereinafter described, so that in the future it shall not be necessary for the complainants to bring a suit each month in order to protect their rights.

II

On November 23, 1943, the complainant Carbide and Carbon Chemical Corporation entered into a contract with the United States of America being Contract No. W-7405-ENG-26. Said contract was entered into by the United States Government as an incident to the prosecution of World War Two then in progress; the scope of the action contemplated under said contract was so important at that time and remains so important at this time, in relation to matters of extremely grave concern to the national welfare, security and defense, that the said complainant cannot exhibit to the Court the whole of said contract. Such inability [fol. 131] is due to the express forbidding of such disclosure by the duly constituted officers of the United States of America. Complainants file herewith as Exhibit "A", and by such reference the same is made a part hereof, a full and accurate copy of all of such portions of the contract as bear upon the questions which will be presented to this Honorable Court in this bill of complaint. For the performance of this contract the complainant Carbide and Carbon Chemical Corporation is paid a fee, the amount of which is fixed in accordance with a formula which the United States Government does not permit the complainant to release. Purchases made by the said complainant pursuant

¹ Exhibit "A" consisted of excerpts lifted from the contract, which was a classified document. Later the contract was largely declassified and is included in Carbide Exhibit 1, to which refer.

to the said contract are financed initially by funds of the United States of America entrusted to the complainant for that purpose.

III

Complainant Carbide and Carbon Chemical Corporation promptly entered upon the performance of the said contract, portions of which are exhibited herewith, and has ever since been engaged therein and is so engaged at the present time.

IV

The Act of Congress of the United States known as the "Atomic Energy Act of 1946" (42 USCA 1801, et seq.) which became a law in the latter part of the year 1946, duly provides for the transfer of all properties, responsibilities, duties, rights, et cetera, from the Governmental instrumentality which had exercised jurisdiction over and supervision of the operation of the area within Roane and Anderson Counties, Tennessee, known as the Clinton Engineer Works. The governmental instrumentality through which said work had been carried on until the transfer to the Atomic Energy Commission was known as Manhattan Engineer District. It is in said area that the complainant [fol. 132] Carbide and Carbon Chemical Corporation maintains its Tennessee offices and carries on its Tennessee work under said contract.

The full transfer of properties, authorities, rights, obligations, etc., of the Manhattan Engineer District to the Commission created under the Atomic Energy Act of 1946 is provided for and directed by said Act of Congress. Acting pursuant to and in full discharge of the provision of said Act relating thereto the President of the United States has duly issued Executive Order No. 9816 dated December 31, 1946, which has brought about the full transfer intended by Congress under the terms of said Act. Pursuant to and as a result of the said executive order of the President the contract dated November 23, 1943 above referred to became a contract between the Atomic Energy Commission, an instrumentality of the United States of America, and the complainant Carbide and Carbon Chemical Corporation, and this change occurred as of midnight December 31, 1946.

V

As a necessary and integral part of the work performed under and course of action required by said contract with the Atomic Energy Commission, all of which work and action was and is an essential and an integral part of the activities of the Atomic Energy Commission in the interest of national welfare, security and defense, the complainant Carbide and Carbon Chemical Corporation has continuously purchased property of the kind which is described as being taxable under the said Tennessee Retailer's Sales Tax Act of 1947, and will continue to purchase such property in the performance of said contract. The number of such purchases which have been made by the said complainant since the effective date of said Act has been very considerable and it would unduly lengthen this bill and tax the patience of the Court, and it is wholly unnecessary to enumerate and specifically describe each of the purchases which have been asserted by the defendant to entitle him to collect the tax. [fol. 133] All of the properties so purchased and to be purchased by the said complainant under its said contract have been or will be used by the United States and this complainant in the performance of the activities of the Atomic Energy Commission and pursuant to the terms of the contract hereinabove mentioned.

VI

During the month of November 1947, the complainant Diamond Coal Company sold to the complainant Carbide and Carbon Chemical Corporation several thousand tons of coal which were delivered to the latter complainant in the said area known as the Clinton Engineer Works. The total consideration paid for said coal was \$107,402.32. Said coal came within the description of property above set forth which has been, is being and will be acquired and used by the complainant Carbide and Carbon Chemical Corporation under its said contract with the Atomic Energy Commission and the averments above made with respect to such property are true with respect to the coal thus sold and delivered during the month of November, 1947. Said averments are likewise true with respect to previous sales of coal made by the Diamond Coal Mining Company to the Carbide and Carbon Chemical Corporation, and also with respect to future sales of such coal, used or to be used by Carbide and

Carbon Chemical Corporation at the plant operated by it in the Clinton Engineer Works area. Said sale price of \$107,402.32 was paid by complainant Carbide and Carbon Chemical Corporation to the Diamond Coal Mining Company together with the sum of \$2,148.08 representing the tax claimed to be due thereon by the defendant, which tax was paid by the former to the latter as directed by the Sales Tax Act.

VII

On December 19, 1947, the complainant Diamond Coal Mining Company having collected said tax from the other complainant hereto, paid the defendant said sum of \$2,148.08 and said sum was paid to the defendant by reason of the position taken by him as to the applicability of the pro-[fol. 134]-visions of the said Tennessee Retailer's Sales Tax Act to the complainants and to the sale transactions described above.

All of said purchases of coal were handled by the complainants in conformity with the same procedure and under the same arrangement in the case of each transaction. Each of said purchases were consummated through the use of forms and under the express provisions of and according to the procedure shown by Exhibit "B"² filed herewith and made a part hereof, which are actual photostated copies of the original records in the possession of Carbide and Carbon Chemical Corporation, the pages of which are as follows:

Page 1. Said complainant's purchase requisition No. 65929.

Page 2. Said complainant's purchase order No. WEX33741.

Page 3. Reverse side of page 2 of Exhibit B.

Page 4. Standard form of invoice being invoice No. 1690. (Said sales during the month of November 1947 were also covered by other invoices which are not executed so as not to encumber the record.)

Page 5. Said complainant's receiving report No. 129688, bearing signature of said complainant's receiving officer and also bearing the approval of a representative of the Atomic Energy Commission.

² Exhibit "B" consists of Carbide Exhibits 13, 14, 15, 16, 17, and 18, to which please refer.

Page 6. Complainant Carbide and Carbon Chemical Corporation's check No. 61624 in payment for the property purchased.

Page 7. Explanatory statement attached to said check.

Page 8. First page of Voucher No. 40 13169 submitted by complainant Carbide and Carbon Chemical Corporation to the United States.

Page 9. Reverse side of page 8 of Exhibit B.

Page 10. Second page of Voucher No. 40 13169.

Page 11. Third page of Voucher No. 40 13169.

By check No. 102231 the United States of America reimbursed the fund in the complainant Carbide and Carbon Chemical Corporation's possession for its expenditures made as aforesaid and which appear in the voucher sub-[fol. 135] mitted by the complainant Carbide and Carbon Chemical Corporation and appearing hereto as pages 8, 9, 10 and 11 of Exhibit "B".

Complainants aver that in each and every instance wherein the complainant Carbide and Carbon Chemical Corporation purchased property from vendors within the State of Tennessee as well as vendors without the State of Tennessee the title thereto became vested in the United States of America at the moment that title passed from the vendor. This was true of all purchases from its co-complainant. Under Article VIII paragraph 4 of the contract dated November 23, 1943 it is provided in part as follows:

"Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under Article VI-A shall vest in the Government at such point or points as the Contracting Officer may designate in writing; provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be."

Complainants aver that the uniform and unvarying practice and custom of complainant Carbide and Carbon Chemi-

cal Corporation and the Atomic Energy Commission in the performance of their said contract was that title to all procurements vested in the United States of America at the moment of acquisition from the vendor, and from that moment, in every instance of a purchase, the property was treated as being the property of the United States Government. No insurance for the protection of such purchased property was taken out, in accordance with the policy of the United States Government which dispenses with insurance [fol. 136] on Government property. The risk of loss of the property rested at all times upon the United States Government and not upon the complainant.

Said Exhibit "B" does not cover all of the sales transactions between the complainants during November 1947, but is typical of the handling of all such transactions.

VIII

Complainants particularly desire to call to the attention of the Court the provisions of Section 9(b) of the Atomic Energy Act of 1946, reading as follows:

"In order to render financial assistance to those states and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to state and local taxation, the Commission is authorized to make payments to state and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the state or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the state or local government by reason of such activities shall be considered in determining the amount of the payment. The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any state, county, municipality or any subdivision thereof."

The complainants allege that all of the transactions of Carbide and Carbon Chemical Corporation and all of its acts [fol. 137] entered into and performed under the contract above mentioned are activities of the Atomic Energy Commission within the intendment and purpose of Section 9(b) of the Atomic Energy Act of 1946, and that if the Tennessee Retailer's Sales Tax is construed as being applicable to the activities or transactions which are herein questioned, that Act is invalid as applied because it is repugnant to the Atomic Energy Act of 1946 including Section 9(b) thereof and if construed as applicable to the activities or transactions as above mentioned is invalid as applied because it is repugnant to the Constitution of the United States.

IX

The said tax paid to the defendant as above averred was paid under protest and duress and if it had not been paid, process, either actually issued and in the hands of an officer, or in the defendant Commissioner's hands, would have been levied against the property of the complainants or one of them, and sufficient thereof for the payment of said tax would have been seized. Said payment was the only way of averting such action. Said payment was wholly involuntary and was expressly made without prejudice to any and all rights of complainants to the recovery thereof and to establish immunity from and non-liability for such tax. The defendant Commissioner expressly accepted the payment would leave available to the complainants the full right to sue for the recovery thereof without meeting the defense of voluntary payment, and that such defense would not and could not be asserted.

The Premises considered, the Complainants pray:

1. That process issue and be served upon the defendant and that he be required to answer or otherwise plead to this original bill but not under oath, his oath being expressly waived.

[fol. 138] 2. That a judgment be entered against the defendant Commissioner which will set forth that the transactions of the complainants, described in the foregoing original bill, and like transactions occurring since those described above, and occurring currently and in the future, are not subject to the tax provided for in the Tennessee

Retailer's Sales Tax of 1947, and which judgment shall also entitle the complainants to have and recover of the defendant the sum of \$2,148.08, being the amount collected by the defendant from the complainants as a Sales Tax under said Act.

3. That upon the completion of the hearing and decision by the Court, a permanent injunction be granted the complainants which shall restrain the defendant and his successors in office from seeking to apply the said Act to the transactions of the complainants of the nature above described, and from seeking to recover from the complainants, or either of them, any alleged sales taxes provided for in the said Act.

4. For such other and general relief as the complainants may be entitled to.

Diamond Coal Mining Company, Cartridge and Carbon Chemical Corporation. By S. Frank Fowler, Solicitor. Cates, Fowler, Long and Fowler, 1412 Hamilton Bank Building, Knoxville, Tennessee.

Duty sworn to by S. Frank Fowler. Jurat omitted in printing.

[fol. 139] COST BOND (Omitted in Printing)

[fol. 140] IN THE CHANCERY COURT OF DAVIDSON COUNTY

SUBPOENA TO ANSWER—ISSUED JANUARY 19, 1948, STATE OF
TENNESSEE

To the Sheriff of Davidson County, Greeting:

We command you to summon Sam K. Carson, Commissioner of Finance and Taxation of the State of Tennessee, and Individually, if to be found in your county, to appear in person or by attorney before the Chancellor of Part Two of our Chancery Court at Nashville, on the 1st Monday in February, 1948, it being the 2nd day of February, 1948, there and then to answer the Original Bill of Complaint of Diamond Coal Mining Company, et al. vs. Sam K. Carson,

Commissioner, etc. and further do and receive what our said Court shall consider in that behalf; and this you shall in nowise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness, Jas. E. Covington, Clerk and Master of our said Chancery Court, at office in the Courthouse at the City of Nashville, Tennessee, this first Monday in October, 1947, and the 172nd year of American Independence.

Jas. E. Covington, Clerk and Master, by Emily Lord,
D. C. & M.

Sheriff's Return:

Came to hand same day issued and executed by serving subpoena on Sam K. Carson, Commissioner of Finance and Taxation of State of Tennessee, and leaving a copy with same. This January 20, 1948.

Garnet Robinson, Sheriff, by J. H. Alexander, Deputy Sheriff.

[fol. 141] IN THE CHANCERY COURT OF DAVIDSON COUNTY

DIAMOND COAL MINING COMPANY et al.

vs.

SAM K. CARSON, Commissioner of Finance and Taxation of
Tennessee

ANSWER TO THE ORIGINAL BILL—Filed February 10, 1948

Comes defendant Sam K. Carson, Commissioner of Finance and Taxation of the State of Tennessee, and for answer to the original bill filed against him in this cause does say:

I.

For answer to the allegations of Section I of the original bill, defendant says:

Defendant admits that complainant Diamond Coal Mining Company is a Delaware corporation qualified to do business in Tennessee, with its principal office in Campbell County, Tennessee.

Defendant admits that complainant Carbide and Carbon Chemical Corporation is a New York corporation qualified

to do business in the State of Tennessee, with its principal office in Roane County, Tennessee.

Defendant admits that he is the Commissioner of Finance and Taxation of Tennessee and is charged with the duty of collecting, and is collecting, the Tennessee Retailer's Sales Tax.

Defendant admits that he required complainant Diamond Coal Mining Company to pay sales tax as alleged in the concluding paragraph of Section I of the original bill, but he denies that his action in so doing was illegal or that complainant was not liable for said tax. To the contrary, he avers that his action in requiring the payment of said tax was lawful and that the complainant was liable for said tax. Defendant denies that complainants are entitled to an adjudication, in this suit, of their tax liability in regard [fol. 142] to future transactions. Sections 1790 et seq. of the Code of Tennessee expressly limit the relief available to complainants, to suits to recover such taxes, as may be paid under protest. Defendant expressly relies on said statutes as a bar to complainants' request for an adjudication of future liability.

II

For answer to the allegations of Section II of the original bill, defendant says:

Defendant does not know, so he neither admits nor denies the allegations that on November 23, 1943, the complainant Carbide and Carbon Chemical Corporation entered into contract No. W-7405-ENG-26, Exhibit "A", with the United States of America, but demands strict proof of this allegation and all other allegations in Section I with regard to said contract.

He denies that the part of the contract exhibited contains all of the portions of the contract that bear upon the question presented in the original bill. He denies that purchases made by complainant Carbide and Carbon Chemical Corporation are financed initially by funds of the United States of America entrusted to the complainant for that purpose.

III

For answer to the allegations of Section III of the original bill, defendant says:

Defendant does not know; so he neither admits nor denies that the Carbide and Carbon Chemical Corporation promptly entered upon the performance of the contract Exhibit "A" and has been engaged therein ever since, but demands strict proof thereof.

IV

For answer to the allegations of Section IV of the original bill, defendant says:

[fol. 143] Defendant admits that the Atomic Energy Act of 1946 became a law in the latter part of the year 1946, and that the same provides for the transfer of all properties, etc., from the Manhattan Engineer District to the Atomic Energy Commission. He admits that on December 31, 1946, the President of the United States issued an executive order No. 9816 bringing about the transfer intended by Congress under the terms of said Act. He admits that if there was a contract between the complainant Carbide and Carbon Chemical Corporation and the Manhattan Engineer District that the same became a contract between said complainant and the Atomic Energy Commission by reason of said executive order of the President of the United States.

V

For answer to the allegations of Section V of the original bill, defendant says:

Defendant admits that complainant Carbide and Carbon Chemical Corporation has continuously purchased and will continue to purchase property taxable under the Tennessee Retailer's Sales Tax Act. Defendant denies that the property so purchased and to be purchased by the complainant has been or will be used by the United States. He avers that such property will be used only by complainant Carbide and Carbon Chemical Corporation.

VI

For answer to the allegations of Section VI of the original bill, defendant says:

Defendant admits that during the month of November 1947, complainant Diamond Coal Mining Company sold to complainant Carbide and Carbon Chemical Corporation several thousand tons of coal delivered at Clinton Engineer Works. He denies that the total consideration paid for said coal was \$107,402.32. He neither admits nor denies that said coal was acquired and used by complainant Carbide and [fol. 144] Carbon Chemical Corporation under its contract with the Atomic Energy Commission but demands strict proof thereof. Defendant supposes that Carbide and Carbon Chemical Corporation paid complainant Diamond Coal Mining Co. the amount of \$107,402.32, together with the sum of \$2,148.08, but he denies that the payment of this latter item of \$2,148.08 constituted the payment of the sales tax by complainant Carbide and Carbon Chemical Corporation. To the contrary, he avers that the item of \$2,148.08 was a part of the purchase price and not the payment of a tax by complainant Carbide and Carbon Chemical Corporation.

VII

For answer to the allegations of Section VII of the original bill, defendant says:

Defendant would show that on December 19, 1947, complainant Diamond Coal Mining Company paid the State of Tennessee the sum of \$2,148.08 but he denies that the same was paid by Diamond Coal Mining Company for Carbide and Carbon Chemical Corporation. To the contrary he avers that the same was paid by the complainant Diamond Coal Mining Company pursuant to its own liability therefor under the terms of the Tennessee Retailer's Sales Tax Act.

He neither admits nor denies that all of said purchases of coal were handled by complainants in conformity with the procedure set out in said Section VII but demands strict proof thereof.

He denies that the title to said coal became vested in the United States of America at the moment the title passed from the vendor. He avers that any practice on the part of the employees of the Atomic Energy Commission contrary

to the provisions of Article VIII, paragraph 4 of the contract Exhibit "A" would be unlawful. He says that it is the practice and custom of such employees of said Commission [fol. 145] to undertake to treat the title to procurements by complainant Carbide and Carbon Chemical Corporation as vested in the United States of America prior to the final inspection and acceptance or rejection, without written notice of acceptance or rejection as required by said Article VIII, paragraph 4, that such practice and custom is void and does not have the effect of vesting title in the United States Government.

VIII

Defendant denies that the transactions of Carbide and Carbon Chemical Corporation performed under the contract Exhibit "A" are "activities" of the Atomic Energy Commission within the intendment and purpose of Section 9(b) of the Atomic Energy Act of 1946. He denies that the Tennessee Retailer's Sales Tax Act would be invalid if construed as being applicable to the sale of coal by complainant Diamond Coal Mining Company. To the contrary, he avers that complainant Diamond Coal Mining Company is engaging in the privilege of selling tangible personal property in Tennessee, coal, and is liable to pay the privilege tax levied against it by the Tennessee Retailer's Sales Tax at the rate fixed by said Act. He avers that the tax is levied upon complainant Diamond Coal Mining Company for the privilege it exercises of selling tangible personal property, coal, and not upon complainant Carbide and Carbon Chemical Corporation.

Defendant avers that the payment of an amount equal to the tax by complainant Carbide and Carbon Chemical Corporation upon its purchase of coal from complainant Diamond Coal Mining Company does not amount to the payment of the tax by complainant Carbide and Carbon Chemical Corporation. To the contrary of this, he avers that the amount equal to the tax which was paid by complainant Carbide and Carbon Chemicals Corporation to complainant Diamond Coal Mining Company was nothing more nor less than a payment by Carbide and Carbon Chemical Corporation of a part of the purchase price.

[fol. 146] Defendant would show to the court that Section 5(b) of Chapter 3 of the Public Acts of 1947, the Tennessee

Retailer's Sales Tax Act, requires dealers, as far as practicable, to add the amount of the tax imposed under the Act to the sales price, and provides that the same "shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts."

He avers that Section 5(b) of the statute was adopted by the legislature to control unfair competition and to provide for a uniform impact of the tax act upon a retail economy of the State. He avers that this provision was adopted in recognition of the fact that the cost of all taxes paid by a seller, such as complainant Diamond Coal Mining Company, must be added to the sales price in order that the seller may survive. He avers that the mere fact that the legislature undertakes to regulate and control the manner in which the seller should take the tax into consideration in fixing the sales price of an article of tangible personal property cannot and does not amount to taxation of the purchaser.

He avers, since the incident of the tax is upon complainant Diamond Coal Mining Company and not upon complainant Carbide and Carbon Chemical Corporation, and since the cost of the tax falls upon complainant Carbide and Carbon Chemical Corporation by virtue of the operation of a statute enacted in recognition of economic law rather than from the operation of the economic law unaided by statute, that the Tennessee Retailer's Sales Tax Act cannot be construed as taxing the activities of the Atomic Energy Commission, even if the buying of coal by complainant Carbide and Carbon Chemical Corporation can be construed as amounting to an "activity" exempted by Section 9(b) of the Atomic Energy Act.

Defendant denies that a construction of the Tennessee Retailer's Sales Tax which would render complainant Diamond Coal Mining Company liable for the sales tax upon coal sold to complainant Carbide and Carbon Chemical Corporation would be invalid as contrary to Section 9(b) of the Atomic Energy Act or as repugnant to the Constitution of the United States.

IX

For answer to the allegations of Section IX of the original bill, defendant says:

Defendant admits that said tax was paid under protest and that complainants are entitled to seek the recourse provided by Section 1790, et seq. of the Code. He denies, however, that complainants are entitled to an injunction as prayed, since to grant the same would be contrary to the express provisions of Section 1795 of the Code.

Defendant here and now denies every allegation of the original bill not hereinbefore admitted and prays to be dismissed with his just cost.

Roy H. Beeler, Attorney General; William F. Barry, Solicitor General; Harry Phillips, Asst. Atty. General; Allison B. Humphreys, Jr., Advocate General.

[fol. 148] IN THE CHANCERY COURT OF DAVIDSON COUNTY

DIAMOND COAL MINING COMPANY, et al.,

VS.

SAM K. CARSON, Commissioner, etc.

ORDER AS TO PROOF—April 7, 1949

This cause came on to be heard on the regular call of the docket, on April 4, 1949, before Special Chancellor Alfred T. Adams, and it appearing to the Court that the complainants have filed no proof, it is therefore, ordered, adjudged and decreed that the complainants take and file their proof within sixty days from the entry of this decree.

[fol. 149] IN THE CHANCERY COURT OF DAVIDSON COUNTY

DIAMOND COAL MINING COMPANY, et al.,

vs.

SAM K. CARSON, Commissioner, etc.

ORDER OF SUBMISSION—August 31, 1949

This cause was heard before Alfred T. Adams, Special Chancellor, September 13, 1949 and former days of the term and was taken under advisement on that date.

Alfred T. Adams, Special Chancellor.

[fol. 150] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65163

DIAMOND COAL MINING COMPANY and CARBIDE AND CARBON
CHEMICAL CORPORATION

vs.

SAM K. CARSON, Commissioner, etc.

ORDER AND DECREE—September 23, 1949

This cause came on to be heard this date upon the petition of the United States for leave to intervene in the above cause; and was argued by counsel.

Upon consideration whereof the Court doth order and decree that the United States be and it hereby is granted leave to intervene in this cause.

It is further adjudged, ordered and decreed that the petition for intervention filed herein on behalf of the United States be and the same is filed in this cause as the intervening petition of the United States.

Alfred T. Adams, Special Chancellor.

[fol. 151] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE & CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance and Taxation

ORDER AND DECREE—May 24, 1950

This cause came on to be heard this date upon the petition of the United States for leave to intervene in the above cause, and was argued by counsel.

Upon consideration whereof the Court doth order and decree that the United States be and it hereby is granted leave to intervene in this cause.

It is further adjudged, ordered and decreed, that the petition for intervention filed herein on behalf of the United States be and the same is filed in this cause as the intervening petition of the United States.

Alfred T. Adams, Special Chancellor.

[fol. 152] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 63163

DIAMOND COAL MINING COMPANY and CARBIDE AND CARBON
CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner, etc.

PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE
AND INTERVENING PETITION—Filed May 23, 1950

The United States of America, by its attorneys, J. Howard McGrath, Attorney General of the United States, Theron L. Caudle, Assistant Attorney General of the United States, and Berryman Green as Special Assistant to the Attorney General, respectfully alleges that it has an interest in the matter in litigation, and in the success of the complainants, Diamond Coal Mining Company and Carbide and Carbon Chemical Corporation, and, therefore,

desires to become a party to the litigation by uniting with the complainants in furtherance of their claims and as grounds therefor alleges:

I

That the intervention for which leave is prayed herein is authorized by the Attorney General of the United States at the request of the Atomic Energy Commission.

II

That the Intervenor adopts and incorporates herein, by reference all of the allegations and conclusions contained in the original bill herein.

III

That by reason of the facts so alleged your petitioner has an interest in this case which it is entitled to protect by intervention herein.

Wherefore, your petitioner, United States of America, respectfully prays that leave be granted to it to intervene [fol. 153] in this action; that an order be entered allowing intervention; and that this Petition for Leave to Intervene be considered and adopted by this Court as the Intervening Petition of the United States.

Your petitioner further prays that the judgment prayed for by the complainants in their original bill be entered and that the Court grant such other and further relief as it may deem proper.

J. Howard McGrath, Attorney General; Theron L. Caudle, Asst. Atty. General, by Berryman Green, Attorneys for Petitioner, United States of America.

[fol. 154] IN THE CHANCERY COURT OF DAVIDSON COUNTY

DIAMOND COAL MINING COMPANY ET AL

VS.

SAM K. CARSON, COMMISSIONER, ETC.

FINAL DECREE—August 29, 1950.

Be it ever remembered that this cause came on to be heard on the 29th day of August, 1950, and former days before Alfred T. Adams, Special Chancellor, sitting by election of

the Bar of Davidson County, Tennessee, in the place and stead of the Honorable William J. Wade, Chancellor, who was unable to attend court on account of illness, on the original bill and the exhibits thereto, including Contract No. W-7405-ENG-26, dated November 23, 1943, entered into between complainant, Carbide and Carbon Chemical Corporation, and the United States of America, together with all amendments to said contract through the 12th day of September, 1949, the answer of defendant; the depositions of witnesses and exhibits thereto; the intervening petition of the United States of America, and the entire record in said cause and upon consideration of all of which the Court finds, in addition to certain other findings of fact, heretofore made, as follows:

That the Tennessee Retailer's Sales Tax, provided for by Chapter 3 of the Public Acts of the General Assembly of Tennessee for the year 1947, is a non-discriminatory excise tax on the complainant, Diamond Coal Mining Co., for the privilege of engaging in the business of making retail sales of tangible personal property in Tennessee. That complainant, Diamond Coal Mining Co., exercised this privilege in making sales of tangible personal property to its co-complainant, Carbide and Carbon Chemical Corporation, and [fol. 155] was liable to pay the State of Tennessee the sales tax collected from it for which it sued in this cause. That complainant, Carbide and Carbon Chemical Corporation, is an independent contractor with the United States of America under contract No. W-7405-ENG-26, dated November 23, 1943, together with the amendments and additions thereto through September 12, 1949. That this independent contractor relationship was not changed by Executive Order No. 9816 of the President of the United States of America, effective December 31, 1946, transferring the supervision of said contract to the Atomic Energy Commission. That the complainant, Diamond Coal Mining Co., in exercising the privilege of making sales of tangible personal property in Tennessee to Carbide and Carbon Chemical Corporation for use by it in its above referred to contract with the United States of America is not exempt from the sales tax levied by Chapter 3 of the Public Acts of the General Assembly of the State of Tennessee for the year 1947, by the doctrine of implied constitutional immunity of federal agencies nor by reason of the exemptions contained in Sec-

tion 9(b) of the Atomic Energy Act of 1946 nor for any other reasons claimed in the original bill of the complainants and the complainant, Carbide and Carbon Chemical Corporation, is not authorized to purchase tangible personal property from the complainant, Diamond Coal Mining Co., for use by it in its above referred to contract with the United States of America without the payment of the equivalent of the sales tax required to be added to the purchase price of said tangible personal property by said Chapter 3. That the allegations of the original bill are fully met and overcome by the defenses raised by the answer and established at the hearing, and said bill should be dismissed at the cost of the complainants. That the intervening petition of the intervenor, the United States of America, which has been fully considered, should, likewise, be dismissed, but without cost to the intervenor.

[fol. 156] It is accordingly ordered, adjudged and decreed for the reasons stated in the opinion of the Court filed herein and authenticated by the signature of the Special Chancellor, which is ordered made a part of the record herein, and on the findings of fact made by the Court, that complainants' original bill be and the same is hereby dismissed at the cost of complainants, for which execution may issue. The intervening petition of the intervenor United States of America, is likewise dismissed but without cost.

The copies of the public documents here listed which were delivered to the Court by complainants of which judicial notice was taken, are ordered filed and made a part of this record.

Hearing before the Committee on Military Affairs—House of Representatives—Seventy-Ninth Congress First Session on H. R. 4280, October 9 and 18, 1945.

Hearing before the Special Committee on Atomic Energy United States Senate—Seventy-Ninth Congress—Second Session on S. 1717, Part 1 and Part 3.

Hearing before the Special Committee on Atomic Energy United States Senate, Seventy-Ninth Congress, First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearing before the Joint Committee on Atomic Energy—Congress of the United States—Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96—80th Congress, 1st Session,
Letter from the Chairman and Members of the United
States Atomic Energy Commission.

[fol. 157] Report No. 1211—79th Congress, 2nd Session,
Senate, Atomic Energy Act of 1946.

Report No. 1186, 79th Congress, 1st Session, House of
Representatives—Atomic Energy Act of 1945, and Part 2
of Report No. 1186.

To the action of the Court in dismissing complainants' original bill and taxing it with the costs, and in dismissing the intervening petition of the United States of America, and to the findings of fact made, and all adverse action taken, both complainants and the intervenor except and pray an appeal to the next term of the Supreme Court of Tennessee sitting at Nashville, which appeal is granted to the intervenor the United States of America, without condition, but is granted to the complainants Carbide and Carbon Chemical Corporation and Diamond Coal Mining Company only on the condition that within thirty days it execute and file with the Clerk and Master an appeal bond in the amount of \$250.00, conditioned as provided by law. It is ordered that all exhibits on file in this cause, including the public documents listed above, shall be sent up to the Supreme Court in original form in event appeal is perfected.

Enter: Alfred T. Adams, Special Chancellor.

[fol. 157a] IN THE CHANCERY COURT OF DAVIDSON COUNTY

No. 65014

CARBIDE & CARBON CHEMICALS CORPORATION

vs.

SAM K. CARSON, COMMISSIONER OF FINANCE AND TAXATION

and

No. 65163

DIAMOND COAL MINING COMPANY and CARBIDE & CHEMICALS CORPORATION

vs.

SAM K. CARSON, COMMISSIONER OF FINANCE AND TAXATION

STIPULATION AS TO EVIDENCE—June 10, 1949

In this cause for the purpose of simplifying the introduction of proof and expediting the cause it is stipulated that the complainants may introduce in evidence, without objection, the following portions of the document published by the United States Government popularly known as "the Smyth Report," which is formally entitled, "A general account of the development of methods of using atomic energy for military purposes under the auspices of the United States Government, 1940-1945," by H. D. Smyth, publication authorized as of August 1945:

Pages 20 and 21, paragraphs 160, 2.1 and 2.2.

Page 27, paragraph 2.27.

Page 29, paragraph 2.34.

Page 30, paragraphs 2.36 and 2.37.

Page 59, paragraphs 5.23 and 5.24.

Pages 61-62, paragraphs 5.32—5.34 inclusive.

Pages 79-81, paragraphs 7.4—7.13, inclusive.

Pages 102 to 104, inclusive, paragraphs 8.34 to 8.48, inclusive.

Page 110, paragraph 8.70.

[fol. 157b] Page 125, paragraphs 10.1 and 10.2.

Pages 127 to 135, inclusive, paragraphs 10.9—10.42, inclusive.

Chapter XI, pages 136-149, inclusive, paragraphs 11.1—11.48, inclusive.

It is further stipulated that the complainants may introduce in evidence, without objection, pages 1 to 22 (middle of page) of report published by the United States Atomic Energy Commission and published by the United States Government Printing Office, entitled, "Atomic Energy Development 1947-1948."

This 7th day of June, 1949.

S. Frank Fowler, Solicitor for Complainants; Allison B. Humphrey, Jr., Solicitor for Defendant.

[fols. 158-161] Bond on Appeal for 250.00 omitted in printing.

[fol. 162] IN THE CHANCERY COURT AT NASHVILLE,
TENNESSEE

No. 65014

CARBIDE AND CARBON CHEMICAL CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

and

No. 65163

DIAMOND COAL MINING COMPANY and CARBIDE AND CARBON
CHEMICAL CORPORATION

vs.

SAM K. CARSON, Commissioner of Finance and Taxation

Bill of Exceptions

The depositions of Charles Vanden Bulck, Oral Rhinehart, Vernon L. Looney, Oren W. Bernheim, W. P. Perry, G. M. Flanagan, taken by consent of parties on behalf of the Complainants in the above named causes, and the United States, which has declared its intention to intervene in these proceedings, said depositions being taken at the Administration Building, Oak Ridge, Tennessee, on December 13,

1948, beginning at 10:15 a. m., in the presence of S. F. Fowler, Solicitor of record for the Complainants; Allisen B. Humphreys, Jr., Solicitor of record for the defendant; Oral Rhinehart, General Office Manager for Carbide and Carbon Chemical Corporation; and O. S. Hiestand, member of the legal staff of the Atomic Energy Commission; except that Mr. Rhinehart was not present during Mr. Vander Bulek's testimony.

[fol. 163] All formalities as to caption, certificates and transmission are waived, and it is agreed that said depositions, after the witnesses have been duly sworn, may be taken in shorthand by A. C. Dore, Court Reporter, and that he may, after transcribing the same, sign the names of the witnesses hereto.

The seal and signature of the notary is waived, and it is agreed the Court Reporter may sign his name. The declaration by the United States Government of its intention to intervene, and the taking of these depositions by agreement does not waive the right of the State of Tennessee and the Commissioner of Finance & Taxation of the State of Tennessee to object to the intervention of the United States Government, or its effort to intervene.

It is further agreed by the parties, acting through their counsel of record, that a single set of these depositions shall be filed in both of the above captioned causes; that these two causes shall be consolidated so far as the introduction of evidence and trial are concerned, and that the Court may enter an appropriate order so providing.

For the information of the Court, counsel for the parties jointly state that the issues presented by these causes have been the subject of conferences and negotiations between the State of Tennessee, and Atomic Energy Commission and the Department of Justice of the United States.

It has been agreed that the amount of the sales and use taxes would be paid monthly to the State as prescribed in the Sales Tax Act, and test litigation instituted to determine whether the sale and use taxes are applicable in the transactions involved in these cases and similar transactions. The outcome of such litigation also is to determine whether the taxes paid to the State shall be refunded.

[fol. 164] It is not the intention of this statement to vary or modify the agreements, but to indicate its existence and general nature.

Mr. Humphreys: I am relying in the course of the trial on the best evidence rule and the hearsay rule, which was not included in the agreement.

(The rule as to the exclusion of witnesses was called for and all witnesses retired from the room except Oral Rhinehart, who remained as the representative of Carbide and Carbon Chemical Corporation.)

[fol. 165] The first witness, CHARLES VANDEN BULCK, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age and occupation.

A. Charles Vanden Bulck, 44, special assistant to the Manager of Oak Ridge Operations.

Q. You live in Oak Ridge?

A. I do.

Q. How long have you held the position with the Atomic Energy Commission that you have mentioned?

A. In the capacity of special Assistant to the Manager since June of this year. I have been employed by the Atomic Energy Commission since they took over the Manhattan Project on January 1st, 1947. At that time, I was head of the Administrative Division which comprises practically the same duties I have today except that I had operating responsibilities.

[fol. 166] Q. Your duties then were broader than they are now?

A. Only in the fact that I had specific responsibility for operations, of Operation Offices Division whereas now I serve entirely in the capacity of a staff assistant.

Q. Describe briefly the kind of work that you are engaged in from day to day.

A. Currently or back in January?

Q. Let's start with the current situation.

A. Well, today I am the Chief Co-ordinator with regard to the negotiations with contractors with the Oak Ridge Operation as to entering into that for its operations. When I say "all" contractors I refer to those that are not let as a result of competitive bidding.

Q. What other duties?

A. In addition to that I serve on a number of Boards and Committees for the Manager, some of them having to do with the incorporation of the town, land used in the town. I serve currently on the Board in connection with investigation of personnel under the Loyalty Provisions of the Atomic Energy Act. I handle special investigations for the Manager as administrative assistant.

Q. Now, Mr. Vanden Bulck, I think that gives us enough of an idea about your present job. Did you discharge those same functions for the Atomic Energy Commission beginning January 1, 1947?

[fol. 167] A. No, on January 1, 1947 I was the Chief of the Administrative Division which involved broad supervision over the Fiscal Branch, the Contract and Legal Branch, the Property Accountability Branch, and the Government Civilian Personnel Unit. That's about all.

Q. Before January 1, 1947 by whom were you employed and what were your duties?

A. From September, 1946 when I got out of the Army, I resumed the same position I had while I was in the service in a civilian capacity, which involved the same duties I have just listed as of January 1.

Q. Were you a civilian employee of the Army from September 1, 1946 until January 1, 1947?

A. That September 1st date I am not too sure about but it was in September when I took—it may be August of that year—somewhere in there that I took up my actual duties in a civilian capacity. I got into the Army in October, 1942. At that time I was furloughed from my civilian job with the Manhattan Project. I served for a period of about four years in the Army with the Manhattan Project.

Q. You say you got out of the Army in 1942?

A. No, 1946.

Q. You say you went into the Army in 1942?

A. That's right.

Q. Where were you employed before 1942?

[fol. 168] A. I have been employed by the Corps of Engineers since December, 1923.

Q. In a civilian capacity as of that date?

A. In a civilian capacity as of that date until the time I was furloughed and got into the Army.

Q. What was the Manhattan District, Mr. Vanden Bulck?

A. The Manhattan District was a special division organized nominally under the Chief of Engineers of the Army to carry on the construction work and the research incident to the completion of the project which was the production of the atomic bomb.

Q. In the course of your employment by the Corps of Engineers were you brought into contract with this project for the development of fissionable material?

A. Yes, in June, 1942 I was employed by the Syracuse District, at Syracuse, New York, and as a result of a special meeting called by the District Engineer, Colonel James C. Marshall, we met in his office one Sunday in June, 1942 and he advised us that a special project had been assigned to the Syracuse District the extent of which he was unable to reveal to us at the time, but it was important enough for him to hand-pick his organization and start up working as a separate unit, separate and distinct from what was under the control of the Syracuse District, and we operated in that capacity until August 15, 1942, I believe it was when the official order was issued by the War Department establishing the Manhattan District.

Q. Was there a separate appropriation for the Manhattan District?

A. No, the initial appropriation was disguised and came from what was then surplus funds or extra funds available to the Corps of Engineers, and we retained that Engineers' appropriation until June, 1946 with the War Department appropriation labeled "Atomic Services" as part of the War Department, it became a part of the appropriation Bill.

Q. Do I understand that the funds which enabled the Manhattan District to operate were concealed so to speak in funds of the Army, the Army Appropriation?

A. That's correct. The Corps of Engineers had available to it funds which were labeled "Engineer Services, Army", which were the funds which we first started out with. Subsequently, they also received an appropriation labeled "Expediting Service and Supply" and it was between those two types of funds that we drew all of the funds necessary for the project.

Q. Can you tell us the purpose of so hiding the funds of the District?

A. Yes, the project we were on was such that the enemy

forces with whom we were at war were not to get any indication of how extensive the American Government was [fol. 170] pursuing the atomic energy project and our normal procedure requires the review of objectives by various Appropriation Committees in Congress, and the public records made thereof are available to anyone that wants to buy them, and the orders with regard to this project were that nothing would be done to disclose its purpose or the fact that it even existed, which was one of the reasons why we put the fence around this area.

Q. Did the General Accounting Office have anything to do with the Manhattan District?

A. In the early stages, no. We refused to give the General Accounting Office any information, and finally we decided to bring them in because of the tremendous backlog of auditing that they would have to perform, and I believe that that was somewhere in February 1943 or '44, I am not sure which, that we actually invited the General Accounting Office to establish an office at this location and at Richland, Washington. We at that time had a backlog of in excess of ninety thousand vouchers that we had paid out which had not been released to them at all. They had been kept here.

Q. Mr. Vanden Bulck, was GAO invited to establish offices at the two places you have mentioned because of their jurisdictional right, you might describe it, or simply as an extra protection to the AEC or rather the Manhattan District?

A. Well, under the law that the Comptroller General's Offices established he has the right to review, for the purpose of compliance with the appropriations, all of the expenditures made by Government Agencies. It acted both as a protection to the contractor and to the Government Agency and the Manhattan District which maintained the payments as currently as possible. I would like to enlarge on that a little bit, Mr. Fowler. In order to protect the contractor from the reopening of some of these expenditures at a later date, and the possibility of him being assessed for reimbursements made to him or of having certain of these reimbursements disallowed, we deemed it in the interest of all concerned to bring the General Accounting Office in.

Q. Mr. Vanden Bulck, was this Oak Ridge project or

whatever you call it, the Clinton Engineer Works, established by the Manhattan District?

A. Yes.

Q. Can you tell us the requirements to which the property had to conform in general in order to meet the desires of the Manhattan District?

A. May I ask this question: Do you mean the area itself?

Q. Yes, the physical necessities of the situation?

A. What we knew of the technical processes involved at that time indicated that we must have a tremendous supply of electric power in order to operate the plants. We also had to find an area that was isolated enough so as to permit the use of natural barriers and our own implementation to keep the general public off the area and prevent any knowledge from getting out.

Q. Did you also need water?

A. We needed water, yes.

Q. So you have named isolation and electric power and water as being the three prime necessities?

A. That's right.

Q. When was this project established here?

A. I believe the first filing on the taking of the land took place in late July or early August, 1942, because I remember particularly Mr. Cline, who was the Chief Engineer for Stone & Webster, and who was responsible for the construction of the town and the Y-12 plant area, calling me and asking that I arrange for certain takings through the Ohio River Division. That is the earliest date. The actual name for the area, Clinton Engineer Works, did not come into existence until later.

Q. What do you mean by the Ohio River Division?

A. The Corps of Engineers has its real estate acquisition procurement decentralized to where each one of the division offices scattered throughout the country had as a part of their operation a real estate section to acquire land, which the War Department disposed of when it became surplus.

Q. And that agency was the Ohio River Division?

A. The Ohio River Division was responsible for this area.

Q. Did the United States acquire the land comprising [fol. 173] this project area?

A. They did. Some of this they immediately purchased

through negotiated sale. In other cases they had to file condemnation proceedings.

Q. Can you tell us the size of the area?

A. Somewhere around 55,000 or 56,000 acres.

Q. Can you tell the purpose of this acquisition by the United States?

A. The purpose was so that they would have sufficient land and sufficient isolation to construct a plant and town remotely enough located from the plant area so as to be a protection to the residents in case something went wrong or to give the plant the isolation it needed to prevent the public from seeing it.

Q. What activity was to be carried on in this area?

A. There were three operations contemplated for this area. The first one that was started was the electromagnetic separation process. The second one was the experimental plant which today is known as Oak Ridge National Laboratory but was actually a forerunner for the production plants that they actually constructed, and the third the gaseous diffusion process which is known as K-25 and operated by Carbon and Carbide Chemical Corporation.

Q. All of this is related to fissionable matter?

A. That's correct. Fissionable material as we know it [fol. 174] today comes in two forms: One in the form of plutonium which is produced at Hanford and the other U-235 which is extracted in either the electro-magnetic process or the gaseous diffusion process.

Q. Was all of this activity related to National Defense?

A. Yes.

Q. What was the stage of learning and also the stage of manufacture in those early days of the Oak Ridge Project? Did people know what they were doing with assurance?

A. No, not all the people. Some of the scientific personnel knew because they were responsible for the invention of the process.

Q. Did they even have well-laid-out and tested methods of procedure in dealing with fissionable materials?

A. No, because the entire history of fissionable material was comparatively recent. It was probably the largest calculated risk anyone ever took. All of our contracts in connection with plant operation specifically provided that the operator did not guarantee that he could or would produce anything; that he would do the best he knew how in

operating the plant and producing the material the Government wanted but he never guaranteed that he would produce it because he was not familiar with any prior processes of separating fissionable material from its basic ingredient, uranium.

Q. Were these operations at Oak Ridge carried on under [fol. 175] risk of injury?

A. Yes, all operations were carried on on that basis, but early in the game the people who were responsible for the health of personnel working with this material were fairly well familiar with some of the peculiarities of the material and we took what we considered then the precautionary measures and all precautionary measures we could possibly take to protect them to the Nth degree, and actually we found out that the confidence we had placed in the Health Physicists was not misplaced because our record here is enviable from that score.

Q. Can you tell us whether or not there is any common provision in the contracts for the operators which holds them harmless, and if so who suggested that, what was the origin of the provision?

A. It originated with the negotiation of the contract with the DuPont Company. They actually were requisitioned for the job at Hanford and for that portion of the work that they did down here. Under the terms of the powers vested in the President by the War Powers Act, anything or any service could be requisitioned, and he would make suitable terms for payment. The DuPont Company insisted upon a complete "hold harmless clause"; as they pointed out, there is no previous experience or skill in regard to operating the plants or producing the materials, and they felt that they should not take such a risk strictly on their own ability. They had to have assurance by the [fol. 176] Government that regardless of what happened the Government would pay the bill. That clause in the contract was submitted to the General Accounting Offices for their prior review, because we had doubt as to whether we were in position to write such an article in the contract, and the General Accounting Office concurred and permitted us to use it in view of the special nature of the project. To answer your question specifically, it was included in the contract with Tennessee Eastman Corporation, with Carbide and Carbon Chemical Corporation and the DuPont Company for the construction of the laboratory plant here

and subsequently in the contract with the University of Chicago which operated the plant and in turn in the contract with Monsanto who took over the operation in July, 1945.

Q. You say that same provision?

A. The same general "hold harmless" provision was included in all contracts.

Q. You say originally DuPont insisted that such provision be inserted. Why was DuPont in position to be able to insist?

A. I assume that DuPont wanted to give its wholehearted cooperation without a thought that it was exposing itself as well as personnel to hazards of which it had no knowledge, in addition to which the technical nature of the plant was such that they did not know how far the public might be involved in any unusual happening in the plant, whether from the possibilities of explosion or noxious gases or other hazards.

[fol. 177] Q. Did the United States find itself in position where it had to avail itself of private organizations such as the DuPont Company?

A. Yes, because the United States Government in its operations of the Government is not experienced as a chemical operator. It operates no plants for any of its services except some arsenals. It gets all of its powders and explosives produced by private interests, and in the main it needed the type of people that only private industry could supply. In that I am talking about chemists, physicists, metallurgists and so forth.

Q. What do you mean by the expression "DuPont was requisitioned"?

A. They were ordered by the President of the United States to take the job.

Q. Did DuPont want the job?

A. No, in fact they had a provision in their contract that permitted them to get out of the operation just as soon as hostilities ceased, that is, active warfare, not just a question of waiting until the Peace Treaty was signed but as soon as the shooting war stopped, DuPont wanted to get out.

Q. What compensation did the DuPont Company ask for in connection with their operations?

A. They asked for reimbursement of all of their costs plus a fee of one dollar. In the reimbursement of all of

their costs they were paid all direct expenses plus an over- [fol. 178] head allowance to cover indirect expenses of their home offices, company plants and so forth, with the express provision in the overhead clause that if the DuPont Company, after it examined its experience, found that the overhead allowance was excessive they would return voluntarily the excess to the Government.

Q. Mr. Vanden Bulek, I want to call your attention to the document known as the Smyth report which is a publication printed in the United States Government Printing Office bearing the title, "A General Account of the Development of Methods of Use of Atomic Energy for Military Purposes under the Auspices of the United States Government, 1940-1945." This was written by H. D. Smyth. It is likely that General Humphreys and I will reach an agreement as to what parts of this book the Court may take judicial notice of. Let me ask you, Mr. Vanden Bulek, wherever in this report there is a reference to the Clinton Project or the Clinton Engineer Project or area or Oak Ridge Project do all such references relate to this project in which we are presently which has been commonly known as the Clinton Engineer Project?

A. Mr. Fowler, I have never read the report. I don't know whether those references are correct. I assume they are correct. I suppose the report was proofread before submission to the printer so I think that we can assume that that is probably true.

Q. Have you heard of any other Clinton project in the [fol. 179] program of the Manhattan Engineer District?

A. No.

Q. Or any other Oak Ridge Project?

A. No.

Q. Now coming more specifically down to the subject matter of these causes, did you participate in the formation and execution of the contract between the Manhattan District and Roane-Anderson Company?

A. Yes.

Q. Can you tell us a little bit of the early contacts between the parties which later resulted in the execution of the contract and of the general circumstances?

A. The Town of Oak Ridge was built and ready for occupancy beginning somewhere around August, 1943. That may be 30 or 60 days off in the actual moving of people onto

the area and putting them in houses, but the Government at that time was running the town, and like everything else, with the number of contractors involved it was felt that the Government would want to turn over to a contractor the operation of the City of Oak Ridge which included the operation of the water pumping station, filtration plant, electric distribution system, maintenance of roads and streets and maintenance of real estate. It would have resulted in the Government hiring a tremendous number of people, which the Manhattan District could not hire because it had personnel restrictions imposed upon it because it was a part of the Corps of Engineers. Therefore, the operation had to [fol. 180] be conducted by contract. That is not to be confused with the type of operation that is prevalent in our plants where technical know-how was needed and other types which the Government could not command. The Corps of Engineers has engaged in numerous projects and operated small towns in connection with some of its water storage areas and has had some experience in town operation, but because it could not get the number of people it needed it was determined to get a contractor in on the scene and have him operate the town under a direct contract with the Government. The District Engineer, Colonel Nichols, at one time asked me for my opinion with regard to getting the Turner Construction Company to operate Oak Ridge. The reason for that was that both he and I had had considerable experience with the Turner Company on the construction of the Rome Air Depot in upstate New York, where the Turner people had constructed an airstrip and numerous buildings, including an engine test building, and so forth. Our experience and relationship with them was such that we desired very much to have someone of that caliber come in here and operate this town, and we subsequently get together with representatives of the company and we then made and negotiated the details of the contract.

Q. The contract between the parties was initiated by Colonel Nichols acting for the United States?

A. That's correct.

[fol. 181] Mr. Green: And Manhattan District.

The Witness: I don't believe that the Turner Construction Company ever approached Colonel Nichols with the idea in mind that they wanted to operate the town.

Q. What was the attitude of Turner Construction Company when approached?

A. At first they were not very enthusiastic about it, but I believe that Colonel Nichols, because of his knowledge of the people comprising the organization, was able to convince them that they should do this, that in so doing they were helping us out and making a justifiable contribution to the war effort.

Q. Did the Turner Construction Company then cause the incorporation of Roane-Anderson Company?

A. Yes, the Turner Construction Company, as the name implies, is a construction company which has affiliations with the unions covering the labor on construction jobs which is the AFL. Coming into an operation such as this it could hardly be construed as a construction job, and different rates of wages would be paid than would be paid for construction work and accordingly they decided, in order not to have their relationship jeopardized on other work that they were doing as constructors, to set up a separate corporation to handle this operation.

Q. Can you tell us in fairly brief fashion just what kind [fol. 182] of work Roane-Anderson Company has done here under this contract?

A. Yes, I think I can. They maintain all of the streets in the town and the roads up to the plants. They operate the water pumping station and the filtration plant; they are responsible for the maintenance of the electric distribution system in the town and incidentally operating the water plant involves the water distribution system of the town; they operate the town sewage plant and its distribution system; they act for the Government in the letting of concessions and all needed services that a town of this type needs. They at one time operated the dormitories subsequently placed there on a concession basis; they operated the cafeteria, placed that on a concession basis. Later on they operated the guest house and put it on a concession basis at a later date. They also maintained all of the Government buildings in the town and have from time to time under special arrangements handled construction work for the Government on a sub-contract basis. They also hire on their payroll the police force of the town, but the actual control of the police force is direct by the Government. They likewise hire all of the Fire Department personnel which

in turn is directed by the Government. They also hired all of the personnel that operate the hospital but who are under the direct supervision of the Medical Director of the Government.

Q. All of those things were done under the contract referred to in the original bill in this case?

A. Yes, I may add that they also operated the bus system on the area which includes the town transportation system and the bus system between the town and the plants and subsequently that was cancelled out and a separate contract was entered into with American Industrial Transit.

Q. What, if any, municipal services do Roane and Anderson Counties furnish within the Clinton Engineer Area?

A. The only services that I know of are due to the arrangements with the two counties involved that in the event of the apprehending of an individual who commits a crime or misdemeanor and comes under the Tennessee State Laws, he is arrested by one of the policemen of Roane-Anderson Company, but who also has been given arresting powers due to the fact that they are deputy sheriffs of both of the county sheriffs involved, and then the individual is then turned over to the county for whatever action is required in the case.

Q. Who maintains the schools and streets, for instance, within the area?

A. The streets are maintained by Roane-Anderson Company. The schools are maintained by Anderson County under a direct contract with the Commission or the Manhattan project, and we reimburse all of the costs of that operation.

Q. Now in your testimony you have referred to streets within the area and roads within the area leading up to the [fol. 184] plants. Who owns those streets and roads?

A. To the best of my knowledge the United States Government.

Q. You have mentioned water plants, and electric and water distribution systems. Who owns those?

A. All of that was owned by the Government.

Q. Is the same thing true of the sewage plant and distribution system and the dormitories and the cafeterias, the Guest House and the other to which you referred?

A. Yes, there is only one qualification I could make in that, although it still is Government ownership, and that is

some of the Tennessee Valley Authority high lines going through here that are owned by Tennessee Valley Authority, but that is also a Government organization.

Q. Did you have any participation or direct knowledge concerning the entering into of the contract with Carbide and Carbon Chemical Corporation?

A. Yes. The work I did was started in New York and was finally concluded after we had moved our headquarters office to Oak Ridge.

Q. Who negotiated the contract there?

A. I believe it was General Groves who contracted Mr. Rafferty who was Chairman of the Board of Union Carbide Company.

Q. What was the attitude of Mr. Rafferty or his company?

A. Mr. Rafferty wanted very much to undertake the operation [fol. 185] for the Government. It was a new field in which they had had no experience, and they realized that such service as the type that they could furnish was necessary after the general inception of the process was explained to them, and he agreed that Carbide and Carbon would do everything in its power to help out.

Q. Did you participate in the actual formulation of the Carbide & Carbon contract as well as the Reane-Anderson contract?

A. Yes.

Q. I believe that the original Carbide & Carbon contract refers to plant K-25; is that correct?

A. Yes.

Q. You have also referred to the Oak Ridge National Laboratory, which is commonly referred to as X-10. Whom was the initial contract awarded to?

A. The construction of that was with DuPont. The first operations, that contract was with the University of Chicago until June 3rd, 1945 at which time Monsanto took over the operation and they operated until February 29th of this year.

Q. At that time it was taken over by Carbide & Carbon?

A. Yes.

Q. Did you participate in the formulation of those contracts with the operating companies and the University?

A. Yes.

[fol. 186] Q. There has also been a reference to Y-12. What is that, the electro-magnetic process?

A. The electro-magnetic separation plant operated by Tennessee Eastman Corporation of Kingsport.

Q. Did you participate in the negotiations, in the formulation of the contract with Tennessee Eastman?

A. Yes.

Q. Was that plant later turned over to Carbide & Carbon?

A. That's correct. As the process went along the decision was to actually improve the gas diffusion process to the point that they no longer needed the electro-magnetic separation process.

Q. And thus we are correct in understanding that you participated in all of the negotiations for the contracts and with the people that I have named, Roane-Anderson Company and these three plants?

A. Yes.

Q. Can you give us the sense of urgency or pressure attending the formulation of the contracts and whether or not the doing of the work awaited the completing of a formal contract?

A. No, in each case we got the work started by issuing what was known as a letter contract, or letter of intent, which indicated the Government's intention to enter into a more definitive contract just as soon as the scope of the [fol. 187] work could be established and the various administrative requirements of the contract made definitive enough to put in a written document. The contracts in most cases were entered into long before the plants were actually completed, because they all involved the employment of large numbers of personnel that needed training. All those people were trained while the plants were actually being constructed, so that when the key was turned over to the operator they had a group of people in position to go in and operate the plant.

Q. Were the formal contracts prepared in a leisurely fashion and with deliberation or was there some atmosphere of haste?

A. The formal contracts, if you will go back and check some of those, sometimes were dated almost a year after the letter contract was first placed with the company. Because of the number of negotiations we had to have with the organizations to get an agreeable document to both sides.

Q. What were the sources of the various provisions under these contracts?

A. To a great degree they originated in the standard form contract that the War Department had prepared and used in its general operations in connection with the work. They had standard forms for construction of that operation for architect and engineer work, and we used applicable phrases from those contracts.

[fol. 188] Q. This "hold harmless" provision was that included in that type of contract?

A. No.

Q. Has experience pointed out any provision in the contract which were really irrelevant or not designed for the actual situation developed here?

A. Could you be a little more specific on that, Mr. Fowler?

Q. What I am trying to inquire about is whether under the haste and pressure of the war situation, these contracts in some particular may simply amount to a collection of provisions from antecedent contracts which might have related to different kinds of situations or operations?

A. Why, in general we had a fair idea of what the operation involved, and while as I stated before, a lot of the phraseology had its origin in War Department contracts, we were not bound by the normal regulations of the War Department and changed the wording to a considerable degree to suit our immediate needs.

Q. Well, we will come to one or two of the provisions that I have in mind. Mr. Vanden Bulek, did you participate in the formulation of other contracts which entered into the carp and maintenance of this project area, such as Stone & Webster's and all of the rest of them?

A. Yes, I was one of the original parties to the Stone & Webster contract.

Q. Were there few or many of such other contracts?

[fol. 189] A. There were quite a number of them although we attempted to place major contractors with known industrial operations and thus permit them to handle most of the phases under the operation by sub-contract.

Q. Is there or was there any counterpart in industry for the operations here conducted?

A. No, there was not.

Q. I am going to ask you to file the Roane-Anderson Company contract in the Roane-Anderson Company cases as

Exhibit No. 1, and to file in the Carbide & Carbon cases the Carbide & Carbon Chemical Corporation contract as Exhibit No. 1 in those cases.

Mr. Green: It is stipulated and agreed by all of the parties hereto that as to the area constituting the Oak Ridge plant or the Clinton Engineer Works lying and being in Roane and Anderson County, Tennessee, the State of Tennessee retains all of its original jurisdiction and rights thereto and therein.

Mr. Humphreys: There is no element or question of cession involved in this case?

Mr. Green: None whatever.

Mr. Humphreys: That clears that phase of it up.

Mr. Green: It is stipulated and agreed that George Horr, President of Roane-Anderson Company and Vice-President of Turner Construction Company is present, and upon [fol. 190] examination would corroborate Mr. Vanden Bulek in his statement relative to the preliminary negotiations between the Manhattan District, and Roane-Anderson Company and Turner Construction Company and the mutual execution of the contract. That is agreed to generally.

Mr. Humphreys: Do you want to state that he would testify to the operations of the company to the same effect?

Mr. Green: Yes, add that to it.

Mr. Fowler: As to all of which Mr. Horr has personal knowledge.

Q. Mr. Vanden Bulek, I therefore ask you to file as Exhibit 1 to the proof of the complainants in the two Roane-Anderson cases the contract, being contract No. W-7405-ENG-115 referred to in the original bills which was dated February 14, 1944, said Exhibit 1 also to include 15 modifications thereof each bearing a separate number.

A. I would like to add to that that while the contract was dated February, 1944, its effective date was somewhere in November, 1943.

Q. Further describing Exhibit 1, each of the modifications sets forth the contract number above stated and then is entitled "Modification No. so and so." I hand you Exhibit 1 as thus described and ask you if that is an accurate copy of [fol. 191] the contract and modifications described?

A. That is an accurate copy and the reason I know, it is is that I personally had this copy prepared by our photo-

graphic reproduction group from the original contract on file in the General Accounting Office.

Q. Will you file it as Exhibit 1 to your deposition?

A. I do so.

Mr. Humphreys: You have checked it since it was prepared?

The Witness: My writing is up on top showing it as Exhibit "A".

Q. These same papers which compose Exhibit No. 1 were filed as Exhibit "A" to the original bill?

A. That's correct.

Q. Do you file it as Exhibit No. 1 to your deposition?

A. I do.

Q. Now, in the two Carbide & Carbon cases will you file as Exhibit 1 to your deposition in those causes, the contract and modifications which were filed as Exhibit "A" to the original bill, being contract W-7405-ENG-26 with modifications each bearing the contract number just given, and they being described as "Supplemental Agreement number so and so", being the first 21 modifications to the contract? Will you file all of those as Exhibit No. 1?

A. I have previously filed these as Exhibit "A" in connection with the original bill; isn't that right?

Q. That's right. Those are the same identical papers.

A. I do so. There is one of them No. 20 which is missing, that has never been consummated.

Q. Do you so file this contract with Carbide & Carbon and the first 21 supplemental agreements as your Exhibit No. 1 to your deposition?

A. I do so with the exception I believe of No. 20 which was never executed. There is one gap in there somewhere.

Q. Do you mean that they skipped a number?

A. It was done deliberately because we had hoped to write another supplement that involved some technical change that the contractor wanted in connection with his operations and we have never gotten around to working that out, so it still remains as a gap. I believe it is No. 20.

Q. I notice that there is no supplemental agreement No. 15, Mr. Vanden Bulek.

A. It may be 15. I thought it was 20. There is one number in the sequence missing which was reserved for certain changes in the scope of operation. It has never been executed.

Q. Now, going back to Roane-Anderson, have there been certain supplemental agreements or modifications executed in connection with the Roane-Anderson contract since modification No. 15, which is the last modification included in your Exhibit No. 1 in the Roane-Anderson cases?

[fol. 193] A. Yes, there have.

Q. I hand you mimeographed copies of modifications Nos. 16, 17, and 18 to Roane-Anderson contract, each of which is entitled "Supplemental Agreement", and ask you if those are accurate copies of such modifications 16 to 18 inclusive and if so, file those as Exhibit No. 2 in the Roane-Anderson cases?

A. Without personally checking these with the documents that I initialed, they appear to be in order. There are file copies that go around for initialing which I personally initialed, and the original signed documents conform with those. As I say, I assume that these are copies.

Q. Will you have those compared for accuracy?

A. I will be glad to make that statement.

Q. And supplement your testimony either by personal appearance if you complete the checking before we adjourn on these depositions, or by letter, which may be included in the record?

A. I will do that. 16, 17 and 18.

Mr. Fowler: Is that all right, Mr. Humphreys?

Mr. Humphreys: Yes.

Mr. Green: Explain the difference between modification and change order.

The Witness: A change order is issued under a change provision of the contract which might change quantities of certain agreed-upon items to be increased or decreased depending upon the need, whereas a modification to the, [fol. 194] contracts specifically requires the agreement between both parties to it and is added to the contract.

Q. Now, Mr. Vanden Bulek, in the two Roane-Anderson cases is it true that your Exhibit No. 1 and your Exhibit No. 2 include a full and accurate copy of the Roane-Anderson contract and all modifications and supplemental agreements up to this date, that is assuming you have checked Exhibit No. 2 for accuracy?

A. Yes. We have a modification No. 19 in process at the moment which has not been signed by all parties as yet to

the best of my knowledge. Mr. Horr can verify that later or I can verify that and let you know about it.

Q. In the Carbide and Carbon cases, Mr. Vanden Bulck, you have already filed as a part of your Exhibit No. 1 all supplemental agreements through No. 21. I hand you now supplemental agreements No. 22 and 23 and ask you if those are accurate copies of supplemental agreements to that contract which have been entered into since the date of the filing of the original bill?

A. I would like to have the same reservation with regard to these as with regard to Exhibit No. 2 to the Roane-Anderson contract, Mr. Fowler.

Q. And you will make a similar indication as to whether they are accurate or not.

A. Yes.

Q. Will you file those two supplemental agreements Nos. [fol. 195] 22 and 23 as Exhibit No. 2 to your testimony in the two Carbon & Carbide cases subject to checking which you have indicated?

A. Correct.

Q. In connection with the Carbide and Carbon contract and supplemental agreements, I notice that there are quite a number of places where words have been obliterated from the exhibits. In all other respects, subject to the checking that you have mentioned you will do on Exhibit No. 2, these two exhibits set forth fully and accurately the Carbide and Carbon contracts and supplemental agreements?

A. Yes.

Q. Now in the Roane-Anderson cases, Mr. Vanden Bulck, I will call your attention to Article IX of the contract in which it is provided in substance that title to all materials and so forth which the contractor purchases under the contract and for which the contractor shall be entitled to reimbursement, shall vest in the United States at such point or points as the Contracting Officer may designate in writing, subject to a right of final inspection. Can you tell me the origin in government practices of that provision and what it was intended to cover?

A. Yes, during the war when the War Department was engaged in tremendous expansion of industrial facilities for the production of war material, it often became necessary to place contract with contractors and manufacturers to process or manufacture equipment and material within the

[fol. 196] limits of their particular field. I have in mind there that you place an order with contractor "A" who does a certain amount of preliminary work on the material and is then directed by the Contracting Officer to ship to contractor "A" for further processing or additions of the specialties that he is particularly qualified to manufacture, and they may conceivably go to three or four different contractors before it finally winds up in the Government Facility where it is ultimately used, and the real purpose of that paragraph was to establish the title to the material in the Government at any point that the Contracting Officer should designate, so as to permit him to ship it on Government bills of lading, and to take advantage of land grant rates, and so forth.

Q. Have procurements by Roane-Anderson under this contract been of the kind which you have described?

A. No, their procurements were for direct delivery on the project.

Q. Is the same thing true of Carbide & Carbon contracts?

A. In some cases yes and some cases no. Where it has to do with processing equipment that falls under the peculiar conditions that I have enumerated here before it would have been necessary to ship it from one point to another before final installation in the plant.

Q. Has such shipping been necessary under the Carbide & Carbon contract?

[fol. 197] A. I believe they maybe have had some of those, Mr. Fowler. I am not too sure that they have but there have been certain changes in their plant facilities that might have involved such shipments.

Q. Now, Mr. Vanden Bulek, would you please state whether under either contract, the Roane-Anderson or the Carbide & Carbon, that the contractor has ever designated in writing a point at which title passed to the United States Government?

A. Do you mean the Contracting Officer?

Q. Yes, the Contracting Officer.

A. To the best of my knowledge, no.

Q. Mr. Vanden Bulek, I want to ask you just a few questions about the actual method of handling procurements by both Roane-Anderson and Carbide & Carbon. What has been your understanding of the time at which title passes,

and the facts affecting that. By title passing I mean title passing to the United States Government.

A. In connection with a shipment which under the terms of the purchase they deliver f. o. b. the vendor or manufacturer's plant, it has always been my understanding that title passed at that point. To substantiate that, in a great number of cases, I believe in almost all of the cases the shipments were made on a Government bill of lading which was prepared by this office and forwarded on to the vendor or it was shipped on a commercial bill of lading with a notation [fol. 198] on it to be converted to Government bill of lading at destination.

Q. You say title passed. Passed to whom?

A. To the Government.

Q. Are the materials or procurements in the possession of Roane-Anderson Company and Carbide & Carbon labeled or branded in any way?

A. All property that permits its marking without injury is marked by either a stamp or brand or an attached label or a metal tag which indicates it is the property of the United States either by stating that it is the property of the United States, and it may be U. S. A. or United States Army or Atomic Energy Commission or some such initials.

Q. What exactly was the label used by Roane-Anderson Company in cases of procurement by Roane-Anderson Company, what lettering was on it?

A. I believe they used U. S. A.—R. A.

Q. When was that label attached to procurements?

A. As soon as the material was delivered at the receiving warehouse.

Q. Delivered by whom?

A. By the carrier or the vendor if he had his own delivery service.

Q. What is the meaning of that label U. S. A.—R. A.?

A. The U. S. indicates the property, the title to it as being vested in the Government. The R. A. is merely for a [fol. 199] segregation of the property that is used by the various contractors on the area in the interest of carrying out their required functions under the contract. In other words, we have so many contractors on the area that there are items of property which are common to all of them that conceivably could be shuffled around so that the Government's interests are not protected to the greatest degree,

and we identify Roane-Anderson property or rather that Government property in the control of Roane-Anderson Company by this R. A., simply as a part of the overall symbol.

Q. Do you know what label was used in the case of Carbide and Carbon acquisitions?

A. I believe it was U. S. A.—C&CCC, but I am not sure of that. I cannot definitely state that.

Q. What was the meaning of that label?

A. It had the same meaning that was on the label placed on the property that was delivered to Roane-Anderson Company.

Q. When was the label attached to goods in the case of Carbide & Carbon?

A. They had their own receiving warehouse at the plant and it would be attached at the time the property was actually received.

Q. Received from the carrier or vendor?

A. Carrier or the vendor.

Q. Are the practices that you have described with respect [fol. 200] to receipt and label of goods prescribed by the Atomic Energy Commission?

A. Yes, and that was as a result of a regulation that the War Department had in effect for all of the War Department property whether it was on a property or property on civil works of the War Department. The Property Manual prescribed that all property should have attached or placed on it or be marked in such manner that it clearly indicates it is property of the United States.

Q. Were the same practices adopted by the Atomic Energy Commission when it took over on January 1st, 1947?

A. Yes, the same rules and regulations that the Manhattan District project operated under were continued in effect by the Atomic Energy Commission.

Q. If the Roane-Anderson contract, for instance, should be cancelled, what becomes of the property in possession of Roane-Anderson here?

A. All of it is turned over to the Government.

Q. Is the same thing true of the Carbide & Carbon contract?

A. Yes.

Q. I will ask you, Mr. Vanden Bulck, since the Atomic

Energy Act went into effect and since December 31, 1946, has the Atomic Energy Commission been engaged here in this Clinton Engineer area in the discharge of its duties and responsibilities under the Atomic Energy Act?

[fol. 201] A. Yes.

Q. Is that the whole purpose of the Commission's activities here?

A. Yes.

Mr. Fowler: It is agreed between counsel for the parties that Mr. Vanden Bulck's deposition shall be filed in both the two Roane-Anderson cases and the two Carbide & Carbon cases.

(The further taking of these depositions was adjourned until 9:30 a.m., December 14, 1948 when the further direct examination of Mr. Vanden Bulck was continued by Mr. Fowler.)

The Witness: I have checked the documents you have referred to yesterday and they are both correct.

Q. You are referring to both exhibits 2?

A. Both exhibits 2.

Q. Mr. Vanden Bulck, did the Clinton Engineer project and the work done there contribute to the construction of the atomic bomb that was used against Japan?

A. Yes, the Clinton Engineer project or the gaseous diffusion plant and the electro-magnetic separation plant both separated material from basic uranium that was subsequently used in the bomb.

Q. Is the operation of this project still of prime import- [fol. 202] ance in connection with military affairs of the United States?

A. Yes.

Q. The City of Oak Ridge is within the Clinton Engineer area?

A. That's correct.

Q. How large is the city now and what has been its population since it was created?

A. The extent of the city in area is roughly six miles long and from a mile to a mile and a quarter in width, the long axis running east and west. At the peak, the population was in the neighborhood of 76,000. Since the gradual reduction in plant operation, which was effected

as a result of cutting out the less economical processing, it has reduced it to a population of about 36,000 at the moment.

Q. Can you tell us approximately how many miles of roads lie within the whole area?

A. I believe it is around 156 or something like that. I remember reading that not so long ago, about 156 miles of road in the area.

Q. Does the City of Oak Ridge have a police organization?

A. It has an organization which we call policemen who are on the payroll of the Roane-Anderson Company, but under the direct supervision of the AEC, with what police powers they get through the fact that these policemen are [fol. 203] deputy sheriffs of both Roane and Anderson Counties.

Q. I believe your testimony has indicated that the city has all of the usual municipal services, such as sewage disposal, electricity and water supply and so forth?

A. It does.

Q. To what extent, if any, do Roane and Anderson Counties contribute to the maintenance of this area, including Oak Ridge or any of the services such as police protection and all of the other usual municipal services that are maintained here for the benefit of the inhabitants and the people living here?

A. As far as the utilities are concerned or the maintenance of roads and streets, there is no contribution by the county or state as to their upkeep. With regard to the Police Department, due to the arrangements we have made with the county officials involved, the sheriff's office, we apprehend persons who are violating a state law and then turn them over to the sheriff's office for jailing or necessary trial. That's the only service we get from the county.

Q. Can you tell us the annual appropriation of the Atomic Energy Commission for the maintenance of schools within the area?

A. Yes, I believe that for the year 1949 that they established a figure somewhere in the neighborhood of \$2,400.00, for school maintenance. That includes the salaries of teachers and maintenance of the school buildings. Only [fol. 204] a part of that we pay to the County of Anderson for the payment of teachers' salaries, and the reason we

have the contract with the County of Anderson for what we refer to as school operation, is to give recognition to the time that teachers spend on teaching programs in Oak Ridge for seniority and I believe for participation in the State Retirement Plan for Teachers.

Q. All of the money that maintains these schools is supplied by the Atomic Energy Commission?

A. That's correct.

Cross-examination.

By Mr. Humphreys:

Q. As a matter of fact, those schools which are paid for by appropriation by the Atomic Energy Commission are operated as schools of the county in order that the pupils of the schools may attend accredited schools; that's correct, isn't it?

A. That's correct.

Q. As a matter of fact, although you put that in a collective sense to pay for the actual cost, they are operated as county schools in order that there may be proper credit given?

A. We made a contract with the county for the purpose of according the graduated student recognition that he has attended an accredited school system.

Q. That's right. The money is paid over to the county and the money is distributed by the county for education, and contracts for teacher employment are handled through [fol. 205] the County Board of Education, and the supervision of the schools is through the County Board of Education. That's right, isn't it?

A. That's right. I might point out that the contract provides for a payment of the administrative cost of the county incurred in connection with its supervision of the schools, of around \$500.00 to \$600.00 a month. The Superintendent of the Schools at Oak Ridge is in effect selected by the Commission, and the county cooperatively places him on the payroll.

Q. But he is a county official?

A. That's right.

Q. And all of the teachers are county school teachers?

A. Yes.

Q. Recognized as such?

A. Yes.

Q. All prosecutions for law violations within the area are at the expense of the State Government, that is, the actual trial process?

A. Yes, we have no courts in the area. Therefore, it must be handled by the State Government.

Q. With regard to the roads in this area at the time it was determined that lands in this particular vicinity would be acquired for the purpose of building this plant or these plants and carrying on this project, it is true that there were certain roads in this area that were sufficient to serve the area?

A. I believe so. There were roads through here. There were people living here and they had a means of ingress and egress.

Q. When this territory was taken over and fenced off for secrecy purposes, those roads were taken over by the—I suppose the Engineers, United States Army Engineers, and they were added to as became necessary?

A. The existing roads and all of the lands in the area that comprised the Clinton Engineer Works were taken over by the Federal Government.

Q. But I mean the roads that were here were such as were sufficient to supply the needs and to accommodate the people?

A. That's right. I assume they were sufficient.

Q. And you have added to those roads as it has become necessary from time to time at your own expense?

A. Yes.

Q. As a matter of fact, because of the nature of your operations you have required many more roads than would ordinarily be required by a community of that many people?

A. I am not in a position to give you an authoritative statement on that but we have found it necessary because of having to isolate our plants to build direct roads of greater capacity than were in existence at the time when [fol. 207] we took over the area.

Q. So, in truth and fact, a large part of your road system is actually a part of your system of plant construction and plant location and plant maintenance?

A. That's right.

Q. Now, you are authorized under Section 9(b) of the Atomic Energy Act; and I read from that:

"In order to render financial assistance to those States and localities in which the activities of the Commission are carried on and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes."

What payments, if any, are made to the state and local governments in lieu of such property taxes?

A. Up to this time, none have been made with the exception of whatever construction you can place on the rental of bridges that we paid for that cross the Clinch River, the Edgemoor Bridge, and the Solway Bridge, on which we pay a tax or rental to the county.

Q. Now, with respect to the question of police protection, and the payment of that initial cost, that is, in the employment of men to act as local peace officers or watchmen or guards or policemen, I believe that at one time the State of Tennessee undertook to have the area opened [fol. 208] to the Tennessee State Highway patrolmen in order that they might assist in policing the area. Is that true?

A. To the best of my knowledge that question is one that came up very recently when we made a public announcement of the Commission's intention to open up the City of Oak Ridge and remove it from the restricted status it is in now, and I believe that there were individuals from this office who went to the State Capital at Nashville and consulted with representatives from the Attorney General's office and discussed that question.

Q. You don't recall that very shortly after this area was fenced off for security purposes that that question did come up, and that admission to the area was demanded, and that there were negotiations on that account between the State and representatives of the operators of this place, and that it was finally agreed that there would be no such insistence by the State?

A. I have no knowledge of that.

Q. Now, on yesterday you testified at some length with regard to the background and the inception of this plant,

but I am not exactly clear how it is operated presently. The overall head of it is the Atomic Energy Commission. The Atomic Energy Commission, does it operate these plants, use its own personnel or does it use the United States Army Engineers, or how is that?

[fol. 209] A. No, the Atomic Energy Act provides for the appointment of five commissioners who shall be the head of the Atomic Energy Commission, one of whom is designated as a chairman. The Act also provides for the appointment of four directors, who have a specific responsibility under the language of the Act. It also provides for the appointment of a general manager who shall execute all of the orders of the Commission and carry on the general administration of the project. In turn, the general manager has re-delegated his authority to the Production Director, the Research Director, the Director of Engineering and the Director of Military Application. The Oak Ridge area, which comprises an operation at Clinton Engineer Works and also in the vicinity of Dayton, Ohio, is under the direct direction of the Director of Production. Mr. Franklin, who is the manager here, has been delegated the authority that he needs to supervise and oversee the area. The nature of the plant operation is such that the Government does not have on its staff or in its employ the technical means and qualifications to operate the plant. Each one of our production plants is operated by a contractor who has had considerable experience in the industrial operation of chemical separation plants, and that is the situation here today, whereby Carbide & Carbon operate the gaseous diffusion plant at K-25. They took over the operation of the electromagnetic separation plant from Tennessee Eastman and are now operating it, and they took over the operation of the Oak Ridge National Laboratory from the Monsanto Chemical Company who had previously taken it over from the [fol. 210] University of Chicago.

Q. What plant is presently operated by Monsanto?

A. None.

Q. When did you say the operation of the experimental laboratory was taken over from Monsanto by Carbide & Carbon?

A. As of March 1st, this year.

Q. Actually, the contract between the Atomic Energy Commission and the prime contractors, except with regard

to the operation of the experimental laboratory, those contracts are for the production of a known specific material in specific quantities, are they not?

A. That's right.

Q. And it is contemplated by those contracts that within the overall provisions of the contract, Carbon & Carbide will produce so much material of each type from each plant during the operating period, or does it have a production schedule?

A. If you are familiar with the Atomic Energy Act, it requires that the President of the United States each year direct the Commission to produce so much material to produce so many weapons. Those production schedules come down through the channel of the Atomic Energy Commission to this area here and here they are then passed on to the contractor. But the language in the contract still indicates that he would do his best to produce [fol. 211] that material. He has never guaranteed that he would.

Q. I don't believe that the Atomic Energy Commission and those whom it has appointed to attend to the actual supervision of its operation, not the contractors, they are not in position to produce any material themselves on account of lack of technical staff?

A. That's correct.

Q. So, actually, the methods employed by the contractor in producing the material, all of that is immediately and directly under the control of the contractor?

A. That is his how-how for which we hired him, that's right.

Q. In addition to the production of actual material, I believe you say that there is an experimental laboratory that is maintained?

A. The Oak Ridge National Laboratory, I believe that is what you are referring to.

Q. Yes.

A. That's right.

Q. Do I understand that the purpose of that laboratory is the possible discovery of methods of application of the material being produced, or the discovery of more economical methods of producing that material, or what is the purpose of the maintenance of it?

A. It is primarily a research laboratory, that is, engaged in what we term basic research. There are two types that

[fol. 212] industry recognizes, the basic which means delving into unknowns and sometimes it has reference to a specific purpose but not always certain of what you are going to get. The other is the type of research where we take a known discovered product and make application of it either in industry or other purposes.

Q. What is the primary object of the operation of this experimental laboratory? Is it the application of this material that has been made to various purposes?

A. I believe in actual practice it is about half and half.

Q. Now, Y-12 and K-25 plants have passed the experimental state and there are no purchases of supplies for materials at either of those plants for any other purpose than the production of the material contemplated by the contract. Would that general statement be true?

A. If you consider that there is always a certain amount of process improvement going on and research essential to that improvement being carried on in both of the plants.

Q. But the primary purpose of the operation of the plants and the purchase of supplies and materials is for the production of a set and agreed amount of material?

A. Yes.

Q. I believe you say that the methods to be used by the contractor in the production of those materials are such as the contractor within its experience and scientific knowledge [fol. 213] edge determines to be best to achieve that end and that it controls those operations?

A. It has control of the operations in that it operates the plant on a day-to-day basis. Periodically, or whenever one of his research scientists come up with an idea which indicates that there is a possibility of process improvement, then it is submitted to us. Invariably, that involves considerable investment by the Government and additional facilities and before they can go ahead and make such an addition to the existing plant they get our approval.

Q. But when that approval is granted, then the ordering and purchasing of supplies, that right and power is in the contractor?

A. That all depends. Where, for instance, as at the present time, they have just completed negotiations with an architect-engineer for an addition to the plant, this will not be handled by the operating contractor. The reason for our keeping that separate is this: that as an operating

contractor; he maintains a wage structure for industrial operation. There is a different rate structure for a construction job, and it would create management problems that he should not be confronted with by mixing the two within the same plant.

Q. But a contract of that character, your contract, contemplates the erection of a complete plant according to plans and specifications furnished, and that contractor has [fol. 214] the control of how he will build the plant except that he is required to meet a certain specified end when his work is done?

A. The operating contractor is responsible for the process design. He has technical supervision and responsibility to see that the plant is constructed and meets his technical design requirement. As far as structure itself is concerned, he has no responsibility for it. He may go so far as to actually procure the actual equipment because of his technical know-how.

Q. So that actually the Atomic Commission does not reserve any control and does not exercise any control over the manner in which this contractor will purchase his specified and slotted material, except that control which exists by reason of the amount of money that they will give him with which—

A. That was the facilities which were placed at his disposal in which to purchase material.

Q. Let me ask you this: In the operation of these plants through contractors has there been any other effort made except in this case to separate the cost of excise and privilege taxes from the cost of the article which is being bought for use by the Atomic Energy Commission or its contractors?

A. Do you mean at any other location in the Commission's operations?

Q. Yes, and with regard to any other type of excise taxes other than the Tennessee Retailer's Sales Tax?

A. I believe a similar situation exists in the State of New Mexico where a sales tax is also in effect and something of [fol. 215] that nature exists in the State of Washington with regard to the Business and Occupation Tax.

Q. But other than those two types of taxes, they are the only two types of excise taxes that the Atomic Energy Commission and the Government has undertaken to avoid that you know of. Do you want to amplify that?

A. I believe that statement is still correct. I think it exists. What the status of it is I don't know.

Q. What I am particularly driving at, Mr. Vanden Bulck, is this: Has the Atomic Energy Commission or the United States Government undertaken to cause the separation of the cost of other taxes from the sales price of any materials and supplies which it purchases in connection with the operation of its atomic plant? Has it undertaken to cause a separation of any other excise tax or privilege tax because that contributes to the sale price of those articles except with regard to this sales tax that you know of?

A. That's a difficult question. I can say this, that the General Accounting Office who reviews our expenditures here, has indicated to us an intense interest in the outcome of this litigation, because it is their contention that while we are discussing what we know here as the Sales Tax of the State of Tennessee in this case, Section IX(b) of the Atomic Energy Act, or whatever the section is that refers to exemption from taxes, has a much wider application than [fol. 216] does the sales tax, and just as soon as this case is settled, let's assume that it is settled in the Commission's favor, they will make an all-out effort to collect back all of the other taxes that have been paid as taxes.

Q. My question was this: that other than as regards this particular privilege tax, has the General Accounting Office ever required that you separate the cost of any other tax from the cost of any article purchased by the contractors in the operation of these plants?

A. Where it is levied as a separate tax on that article, and it is distinguishable that way, the General Accounting Office has requested us not to pay the taxes or to pay it under protest.

Q. You mean where there is a sales tax as such?

A. Yes.

Q. And that is the only form of privilege tax that the General Accounting Office has required the separation of from the cost price of the article purchased by the contractors at these plants here at Oak Ridge?

A. Yes.

Q. My recollection with respect to the Carbide contract is that the consideration for the work to be done is stricken out as secret material information that cannot be disclosed?

[fol. 217] A. I would have to see the contract to make certain of that but I believe that the general striking out of amounts had to do with the volume involved in the contract specifically. That was the intent, not to put the amount in, but as far as the fee to the contractor is concerned, that has to be in it because it is recorded in the hearings of the Appropriations Committee of the Congress as passed.

Q. What is the fee that is paid to Carbide & Carbon?

A. I can figure it out from the contract. I just don't know offhand. It may be somewhere between \$1,500,000 and \$1,900,000 a year, somewhere in there, maybe a little more. It would not be any less than that, I am sure. You can get that information from the record of the Appropriations hearings.

Q. Could you get the information and supply your deposition with it?

A. Yes, I can do that.

Q. It would probably be more available to you?

A. I think I have a copy of it.

Q. In addition to being paid a fixed fee as you have indicated, is it or not true that Carbide & Carbon under the contract has the right to expect an interest in any patentable discoveries that are made under its operation?

[fol. 218] A. I would have to refer to the patent article, but I believe it provides that all discoveries that it makes are and must be furnished to the Commission, and the Commission has the right to take out the exclusive patents or not as it sees fit, and it may in some cases indicate that it has no interest in the invention, at which time the contractor may if it so elects, take out a patent application.

Q. Reading from "Article VIII-R-Patent. (a) It is understood and agreed that whenever any patentable discovery or invention is made by the contractor or its employees in the course of the work called for in this contract, the Contracting Officer shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and the rights under any application or patent that may result." What is the purpose under that with regard to patents?

A. We maintain at this installation a group known as the Patent Branch who review all of the notebooks of the

scientists and technical experts that work for the contractors. The contractor also examines the operations and whenever he comes across something novel or that has patentable [fol. 219] possibilities, he submits that in the form of a notice to this group. They examine it and conduct the researches and come up with a recommendation as to whether or not the patent should be vested in the United States. During the war period very few patents were actually taken out by the United States, for the simple reason that patent information is public information and we did not want anything in regard to the operation to get out as public information. However, a number of them have been processed since and I believe that they have some arrangements with the Patent Office to keep them secret. Very few if any patent applications have been referred back to the contractor, indicating that we have no interest, and under the terms of the Act of course we cannot turn anything back that has to do with the application or production of fissionable material.

Q. On yesterday, Mr. Vanden Bulck, you explained the paragraph in each of the contracts relative to when title to materials, tools, machinery, equipment and supplies should be considered as vesting in the United States Government, and at that time, I believe, your explanation of that article was that it was a provision put in this contract primarily because a similar provision had been in other United States Government contracts, because it enabled the Government, by designating title at the proper time, to take advantage of special freight rates that were available to it, with certain carriers. Was that correct?

A. That is correct. As I pointed out there were some procurements by a contractor of the Government involving processing through various manufacturing plants, not all of which were under the same contractor, and the material or the equipment had to be shipped from one point to the next, and the Government took complete responsibility for it. It had to do that in order to permit it to pay the contractor for the work it had completed in this chain.

Q. Now, that general statement in the contract in regard to when title shall vest in the Government is accompanied by certain provisos. Did your explanation of the matter undertake to extend to the provisos that are attached to that general statement?

A. The proviso that I believe you refer to requires that the Contracting Officer designate the point at which title passes; is that correct?

Q. Yes, the first proviso is that the right of final inspection and acceptance or rejection of materials, machinery, equipment and supplies at such place or places as he may designate in writing, is referred to the Contracting Officer?

A. That's right.

Q. How do you relate your explanation to that proviso?

A. In actual practice, the contractor places an order for equipment or supplies. They are delivered at Oak Ridge to these Government-owned warehouses that are assigned to the contractor for the execution of his work under the [fol. 221] contract.

Q. Let me interrupt you just a minute. Are they received there by the employees of the contractor?

A. They are received there by the employees of the contractor.

Q. Let me ask you this further question?

Mr. Fowler: Did you finish your answer, Mr. Vanden Bulek?

The Witness: I think I can add to this in just a moment.

Q. I am not going to get you off in your answer but at that point I wanted to ask you is there any inspection maintained by the Atomic Energy Commission at that point?

A. If I can go through the process, I think that will become clear.

Q. All right.

A. The material is received at the warehouse, and huge quantities of material come in. Because we hire a contractor for his technical know-how and management, we do not attempt to duplicate the force, and therefore 90 per cent of the material that comes in has no check by a Government representative. Approximately 10 per cent of it is done selectively by spot check. He there examines the material with the contractor's inspector, and the two of them agree on the condition and he makes his report on that basis. Actually, we could not, without duplicating the contractor's entire force, engage in the inspection that the contract indicates.

[fol. 222] Q. So then the situation resolved itself down to this: If the contractor says he needs certain materials or

supplies, he orders the materials and supplies, and they are delivered to him, and then he proceeds to use them in the manufacture of a certain designated amount of material under the contract?

A. That's right, with the exception of certain designated material which we must furnish him that he cannot obtain anywhere else. We attempt to have him buy everything he needs to operate the plant.

Q. An- except with regard to possibly, as you say, ten per cent, there is no check or inspection maintained by the Government or the Atomic Commission. He does all that himself.

A. He does all of that himself and we accept his operation on the basis of our ten per cent selective check.

Q. Now, this provision of the contract that you explained on yesterday contains another proviso: "Provided further that upon final inspection the contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the contractor shall be responsible for the removal of the rejected property within a reasonable time."

Is that proviso complied with?

A. Wherever our selective check indicates that something should be returned, yes. But invariably it is a joint opinion reached by the two representatives, the contractor's [fol. 223] man and our man, that some material when it arrived is not in proper condition for use.

Q. As a matter of fact, the proviso, if it contemplates inspection, it actually is not complied with because inspection does not take place except with regard to a very small per cent of the material?

A. That's right. We just maintain a selective check.

Q. As a matter of fact, have you ever executed any written notice of acceptance as regards the large volume of material that is bought?

A. Yes, we do in each instance. There is a receiving report which the inspector signs, even though he has not inspected all material, on the basis of the type of check that he conducts on a small portion of the material.

Q. He actually does sign such inspection statement although he makes no inspection?

A. That's right.

Q. Now, on yesterday you made a statement with regard to your opinion as to title to the property, and while I did

not object to it at the time, and reserved the right of objection on the trial, without waiving any right to make an objection, I would like to ask you in regard to that. Will you please state again what you said relative to your opinion as to when title to this property is vested in the United States Government?

A. In that connection, I have to refer to the various manuals [fol. 224] which the Army, when it was operating this project, had as its guiding influence, which manuals have been accepted by the Atomic Energy Commission until it can substitute its own manuals. They are enormous technical manuals, and I believe that Mr. Fowler can get those for you, but they state generally that in any case, the property or the material that is purchased by the contractor will in effect be the property of the United States as soon as it is purchased, that the title vests in the Government upon delivery and is immediately marked and identified as Government property when it is delivered at the plants at which it is to be used; that for instance, to move on a Government bill of lading it must be Government property, which was the point I explained, that it vests at the f.o.b. point, which may be the manufacturer's plant. We could not ship private property on a Government bill of lading. It must be all Government property. We have had times in the past that we had to obtain special freight rates, what is known as Section 22 quotation. It is possible to obtain that freight rate only with regard to Government-owned material. The reason for getting the rate in that manner is to hide from the general public the nature of the item being transported. Normally, to get a freight rate established, you have to go through quite a bit of publicity and file with various divisions to give them all an opportunity to examine the reason for the rate structure. We have time and again in the past gotten quotations, but because [fol. 225] the only way we could get the rate established was to indicate that it was Government property.

Q. So then, your conclusion with regard to the time when title passed to the Government, I believe you say is actually based on statements contained in manuals that were gotten up by the U. S. Army Engineers at the time that operated the Oak Ridge plants and which manuals are still in effect now, having been adopted by the Atomic Energy Commission?

A. Yes.

Q. What are those manuals?

A. I don't know the numbers of them but the one having to do with property accountability, I believe, is known as TM 14-910. I believe that can be made available to you. What I mean is that those are the administrative regulations of the War Department which are passed on to us who are a part of it. It makes these statements. We have no other basis except to accept those at face value.

Q. You spoke of those regulations as regulations which were compiled by the United States Army Engineers to govern cost-plus contracts; is that right?

A. Yes, the Audit Manual specifically had to do with that.

Q. Are these contracts between the Atomic Energy Commission and the prime contractors involved in these suits such as could be fairly characterized as cost plus?

A. Yes, they are cost-plus-fixed-fee contracts entered into under the War Powers Act. That figure I gave you before [fol. 226] is \$1,920,000. That is where I estimated \$1,500,000.00 to \$1,800,000.00 as the fees paid for all of the operations at Oak Ridge.

Mr. Fowler: Paid Carbide & Carbon Chemical Corporation?

The Witness: Yes.

Q. Since these contractors are cost-plus-fixed-fee contractors, their relationship to the Atomic Energy Commission or to the Government is not essentially different from the relationship which any other cost-plus-fixed-fee contractor has to the United States Government; is that true or not?

A. That is not true. Actually, there is a different relationship in that we take a greater immediate interest in the expenditure of funds. In the normal Government method of contracting, which is either a lump sum or a unit price arrangement where we were interested in the finished product at so much per unit or so much for the entire amount, we buy a completed unit at the end of that time, and generally unless you get into a major job where you make partial payment, that title does not vest in the Government until the unit is turned over to you at completion. It is completely the contractor's responsibility.

Q. That same situation is true, isn't it, with regard to this material that is being manufactured by the prime contractors for the Atomic Energy Commission, that is, they

turn out a completed amount of material under a contract [fol. 227] for which you pay them a fixed fee, and the manner in which they manufacture it is left to their own technical science and skill?

A. The fixed fee is merely a payment to the contractor to cover its know-how and management ability and so forth. In addition to the fixed fee they are reimbursed for their actual operating cost in running the plant. The contractor, to give you a picture of how this operation works starts with a raw material at the in-pu^t end of the plant, which we furnish to him, rather he cannot buy it. The basic material must be furnished by the Government. He then processes that through the plant and it comes out an end-product which he turns over to us.

Mr. Fowler: Who owns it during that progress?

The Witness: That's a legal question. I don't know whether I can answer that. But I would say we never lose control of it and since we furnished it initially I don't believe the title has ever passed.

Q. What you are speaking of is that material from one plant is delivered here and manufactured into—

A. No. Raw material from one of the other plants is delivered at the gaseous diffusion plant to go through the process and given to the Commission at the faucet at the other end of the plant. We then take it elsewhere where it again begins as raw material for processing into something else.

[fol. 228] Q. They get paid a certain amount for producing so many units of that material?

A. No, they get paid a fee for the operation of the plant whether they produce anything or not. I believe within the original contract it requires that a building or cell as we refer to it, has to be out of operating and in complete shut-down for at least six months or more before their fee payment stops.

Q. Now, with regard to the operation of Roane-Anderson Company, Roane-Anderson Company is a private profit corporation, isn't it?

A. It operates as such.

Q. Who incorporated it in Tennessee?

A. I believe the Turner Construction Company did.

Q. Is it still a subsidiary of Turner Construction Company?

A. Yes.

Q. Who are the directors of it?

A. That I don't know. I would have to refer to one of these annual statements, but I am not familiar with the membership of the Board of Directors.

Q. And it operates the services which are spoken of in the contract for an operating fee which is mentioned in the contract?

A. That's right.

Q. Now, in connection with this operation and those services, what is the relationship between Roane-Anderson Company and your office as representative of the Atomic Energy Commission? To what extent do you undertake to control the operation of these services by Roane-Anderson Company?

A. Well, the contract provides for the type of services that they will perform in addition to which each year, before the end of the fiscal year they get together on a program of their operations for the ensuing fiscal year.

Q. In the interim, after you have agreed on costs and other factors of that character, the operation of all of the facilities at Oak Ridge is peculiarly the business of Roane-Anderson Company and you are not concerned with it?

A. We do not enter into the operations. That is their responsibility to operate.

Q. They buy all of the necessary supplies and materials and operate and you all pay the cost-plus-fixed-fee?

A. That's right, with the exception of a few minor items which carry a statutory limitation as to prices.

Q. You do not exercise the same immediate interest and supervision over the execution of the Roane-Anderson contract that you do in regard to Carbide & Carbon and do in regard to Monsanto?

A. Strange as it may seem, we do exercise greater supervision with regard to Roane-Anderson than we do the [fol. 230] others, for the simple reason that town operation and that sort of maintenance operation is general knowledge to engineer personnel which comprises the Corps of Engineers from which the basic organization here is drawn. We know about that organization.

Q. You are more interested in the way they do it?

A. It had its public relation aspect in it.

Q. Would you refer to the contract, to any provision in the contract which reserves for the Commission any con-

trol over the manner in which Roane-Anderson Company shall discharge the functions that it contracts to discharge under the contract?

A. There are throughout the contract innumerable places where the prior approval of the Contracting Officer, who is an agent of the Commission, or his authorized representative, is required before the contractor does anything about it.

Q. What are those in regard to, if you recall? You are more familiar with the contract than anybody else?

A. That the procurements in excess of a certain amount of money value have to be submitted for approval, changes and so forth.

Q. But that simply contemplates that if the cost of the operation exceeds an amount which it has been agreed upon should probably be sufficient, that they will have to get approval to expend any more than that?

A. No, that is not true. It has no reference to the overall amount of the set-up. We might approve a program [foi. 231] for Roane-Anderson Company to spend a million and a half dollars through its own efforts in some maintenance project in town. Actually, the way the contract is written, in actual operation there is a provision there that if he places an order in excess—and I cannot remember the amount offhand—I believe it may be two thousand dollars—he must get the prior approval of the Contracting Officer or his authorized representative to place that purchase order, despite the fact that he has gotten general approval of the overall project. There are a number of other actions that he takes that require prior approval of the Contracting Officer.

Q. Would you say in actual practice the reservations made in the contract in favor of the Atomic Energy Commission or the Contracting Officer are actually observed?

A. Yes, because we have had to maintain an organization to undertake our responsibility in that regard.

Q. Now, on yesterday you referred to Rules and Regulations with reference to operations in one answer that you gave, and at that time those Rules and Regulations were not present, and I don't suppose they are this morning.

A. Can you remember exactly in what connection I mentioned it. I perhaps can produce it for you?

Q. I am not as clear on that as I should be. We were talking about the best evidence objection.

Mr. Fowler: The Administrative Audit Manual was one [fol. 232] thing.

Mr. Humphreys: There was another one.

The Witness: I think it was in connection with the marking of property.

Q. That's right.

A. That's "Techhical Manual 14-910". I believe you have it there.

Redirect examination.

By Mr. Fowler:

Q. Mr. Vanden Bulck, in your testimony on cross-examination you summarized according to your best recollection the provisions of the Army's Manuals governing procurements which are being observed or have been observed at Oak Ridge. I will ask you in practice has the handling of purchased materials conformed to the summary as you stated it?

A. Yes, it was necessary that we comply with those Manuals because we were subject to inspection by a group that at the time the Army was in control of the project reported directly to the head of the project, General Groves, subject to the take-over by the Commission. Subject to the transfer of the activities to the Commission, that same group reported to the Comptroller of the Commission in exactly the same inspection capacity. The inspectors from this special branch went into each operation, checking the operating procedure, checking the receiving reports, checking the property records, made up an audit statement and certified the audit, wherein they either pointed out the [fol. 233] operations for correction or gave a clean bill in the event we were complying with that Manual.

Q. Do I understand that that was the procedure employed here until the Atomic Energy Commission took over, and it is still employed here today?

A. The only change that has been made is that the units have been de-centralized so that it now reports to the Fiscal Director at Oak Ridge instead of at the Washington level.

Q. I hand you War Department Technical Manual TM 14-910 promulgated by the War Department over the signature of General Marshall, the then Chief of Staff, dated October 10, 1945, styled, "Changes. No. 1." I will ask you

to look at paragraph 37 under Section IV. and read that into the record.

A. (Reading): "37. With respect to the receiving and inspection of materials and other property, it is unnecessary for the Contracting Officer to require Government employees designated by him to duplicate completely the quantity check and quality inspection performed by the contractor in connection with materials and other property received for use on a contract, provided:

(a) Written evidence of quantity receipt, quality inspection and acceptance is obtained from the contractor in accordance with the provisions of paragraph 42. When the [fol. 234] contractor's quality inspection functions are not conducted simultaneously with the quantity check the contractor's routines should provide for advising the Accountable Property Officer of the results of such inspections when completed:

(b) The Contracting Officer satisfies himself that the contractor's technical methods of quality inspection are competent, that the contractor's procedures with respect to quantity receipt and physical and accounting control of such materials and property conform to good commercial practice and that all such methods and procedures are adequate to protect the interests of the Government.

(c) The Contracting Officer, by frequent observation, assures himself that such procedures and methods are being effectively carried out."

That is the method under which we operate on this project.

Q. Both under the Manhattan District and the Atomic Energy Commission?

A. Yes.

Q. Also, Mr. Vanden Bulck, I will ask you to read into the record paragraph 42 of Section V of this same document, the reason why I make this request being that paragraph 42 is referred to in paragraph 37.

[fol. 235] A. That's correct. (Reading):

"42. The Accountable Property Officer must obtain written acknowledgement of receipt of all Government property furnished to the contractor. The contractor's receiving report, shipping documents or other forms listing the property, as prescribed herein, may be

used to obtain the contractor's acknowledgement of receipt and in all cases these documents must be signed by persons authorized by the contractor to receive and accept property on behalf of the contractor. A written statement listing the names of persons so authorized will be obtained from the contractor by the Accountable Property Officer, and he will review the documents to ascertain that they are appropriately receipted."

Q. Mr. Vanden Bulck, I notice on some of these reports that are used by Roane-Anderson Company and by Carbide & Carbon a reference to the Administrative Audit Manual and in connection with that I hand you a copy of paragraphs 202.1, 2, 3 of Chapter 2 of Part II of the Manual for Administrative Audit of cost-plus-a-fixed-fee construction contracts, and ask you if the provisions set forth in those paragraphs have been complied with by the Manhattan District and by the Atomic Energy Commission in procurements at Oak Ridge, particularly directing your attention to paragraph 202.3?

A. Yes, those are the regulations under which we operate [fol. 236] and confirm what I stated before, that on the basis of an examination of the contractor's procedure, and a selective test check by a Government representative, we accept the actual receipts by the contractors of those items which are not physically checked by our representative.

Q. Is that paper which I have handed you an accurate copy of those paragraphs of the Administrative Audit Manual?

A. The only way that I could make that statement would be to actually compare it. I assume that whoever copied it copied it correctly. It appears to be. I would not say definitely that it is.

Q. Subject to your checking this for accuracy and reporting back to us your conclusion as to its accuracy, will you file a copy of that as Exhibit No. 3 in the Roane-Anderson cases and Exhibit No. 2a in the Carbide cases?

A. Yes.

Q. Now, Mr. Vanden Bulck, I broke into General Humphreys' examination of you to ask you who owns the materials which are processed in the plants at Oak Ridge. Do you recall the provisions of the Atomic Energy Act with

respect to fissionable materials and the raw materials which may be manufactured into such?

A. If memory serves me right, I believe that Act states that title to all fissionable material is vested in the United States Government or the Commission and that small quantities may be allowed in the hands of private individuals [fol. 237] under confidential regulations to be issued by the Commission?

Q. For instance, hospitals?

General Humphreys: Experimental purposes

The Witness: I believe that you are talking about the publicity that has come out with regard to the use of radioactive material. The sort of material that generally is in the hands of hospitals for treatment of patients today is not fissionable material as such. This confirms what I stated before. I will read you from the Act here.

(Reading): "It shall be unlawful for any person, after sixty days from the effective date of this Act to

(A) possess or transfer any fissionable material, except as authorized by the Commission or

(B) export from or import into the United States any fissionable material or

(C) directly or indirectly engage in the production of any fissionable material outside of the United States."

I believe the Federal Register has published regulations on the manner in which source material may be placed in the hands of individuals other than the Commission, but it is in such quantities that it creates no hazard.

Q. Who owns the material as it goes into the in-put part of the plants here?

[fol. 238] A. We have that shipped down from one of our other operations offices. It is shipped on Government bill of lading or Government truck or other Government carrier and delivered to the contractor. It is owned by us at the time it arrives here.

Q. Who owns it after it comes out of the output end?

A. We take absolute control of it and can arrange for its shipment and delivery and so forth.

Q. With respect to the extent and control exercised by the Contracting Officer under these contracts, you have stated

that in innumerable instances the contracts recite that supervision affirmation or action by the Contracting Officer is required. You are perfectly willing to let the contracts speak for themselves on that score, I take it?

A. Yes, I could not remember all of the cases where the contract provides for such action.

Q. You illustrated your discussion of that subject by referring to a provision requiring the Contracting Officer's concurrence in procurement of more than two thousand dollars or twenty-five hundred dollars or some sum. In practice here at Oak Ridge has his concurrence been required in purchases in smaller sums than that?

A. No, in order to maintain our supervisory force to a minimum we have rigidly observed whatever limitations the contract contained and without any attempt to control the [fol. 239] contractor below those amounts. It would require additional personnel on our staff to take on a greater volume.

Q. Has that been an unvarying practice not to approve any purchases below the amount specified in the contract?

A. Generally, yes. Occasionally, the contractor will come across a procurement which he has some doubt about as to whether he is going to receive reimbursement for it, at which time he requests our administrative review and concurrence that it is not required.

Q. General Humphreys asked you whether or not Roane-Anderson Company is strictly a privately-owned corporation operating for profit. Can you tell us the sole purpose of the creation of Roane-Anderson Company?

A. Yes, I believe I went into that yesterday when I pointed out that the parent corporation, Turner Construction Company, as the name implies, is strictly a construction company and as such has to live with labor unions in the construction field, and pay a higher rate of wages than normally paid on an operation of this sort. In order that they would not disturb their relationship with construction unions we decided that it would be more advisable for them to organize a separate corporation just for this operation.

Q. And Roane-Anderson Company was incorporated as a result of that?

A. I believe that's true.

[fol. 240] Q. So far as you know, does Roane-Anderson

do anything else besides perform its contract here exhibited?

A. To the best of my knowledge, it does not do any other business except the operations in this area.

Q. From time to time in your testimony there has been a reference to Government bills of lading.

General Humphreys, would you require that we exhibit that?

General Humphreys: No, I think everybody knows what he is talking about.

Q. Have Government bills of lading been employed in connection with procurements by both Carbide & Carbon Chemical Corporation and Roane-Anderson Company?

A. In some instances, yes: I can clarify that by saying that it depends entirely on the terms of the purchase. They will send out requests for bids, and if the accepted bid provides for delivery F.O.B. the vendor or manufacturer's plant, it is either shipped on a Government bill of lading at that time, or it is shipped on a commercial bill of lading with a notation on it "conversion to Government bill of lading at destination."

Q. Can you tell us why in some instances that conversion notation is put on the bill of lading and in other instances it is not?

A. Well, if it is not on there it means that the vendor or [fol. 241] manufacturer from whom the purchase was made has included the freight in his price, and it is not a separate item. In other words, we buy f.o.b. Oak Ridge and we do not consider freight except as a part of the purchase price. It is not considered separately.

Q. So, if any purchase is f.o.b. vendor's plant, the notation of conversion to Government bill of lading is uniformly put on the commercial bill of lading?

A. Yes, the contractor requests that the vendor or manufacturer put that statement on there.

Q. Now, various questions have been asked you about the inspection practices and you have described the selective or spot check inspection which has been made by the representatives of the Atomic Energy Commission and you have referred to the preparation of a receiving report signed by that representative. I now ask you, are those inspections and the receiving report concurrent with the receipt of the goods from the vendor?

A. When the material comes in and the package is broken open they provide a tally sheet. That tally sheet is the fore-runner of the actual inspection and receiving of the report which is the typed document. The man out there physically inspecting the property does not necessarily have available to him a typewriter that he can prepare such a report on, but he makes this tally-in sheet which has the same thing on it from the standpoint of signature that the final inspection and receiving report did.

[fol. 242] Q. In other words, the basic material that is incorporated in the receiving report is complete but written down on a tally-in sheet at the time of the receipt of the goods?

A. That's right. That is the rough copy used by the inspector and checker.

Q. Is the inspection to which you refer made out when the package is broken open?

A. Yes.

Q. With reference to the questions asked you as to whether the resistance of the Atomic Energy Commission to state taxes is only applicable to the Tennessee Sales Tax, that is, so far as the Tennessee taxes are concerned, is that true, is the Tennessee Sales Tax the only tax of that state that the Atomic Energy Commission has resisted or will resist?

A. To the best of my knowledge, no. We will probably ask for consideration on some of the other taxes that are being paid that are intimately tied up with the activities of the Commission. What that will be I do not know, but for instance, at the moment we pay the carbonic tax. We could eliminate paying that tax by procuring the material directly as a Government agency, but we find that economically that is unsound because we would then have to provide facilities for handling it, and on that basis we have paid the tax during the time the project was under the supervision of the [fol. 243] Army. However, the General Accounting Office has asked that question, that after the decision on the Sales Tax, what is our proposal with regard to the Carbonic Gas Tax, and I believe that if we can get a determination as to the meaning of the language in the Act that perhaps there may be other taxes that will be the subject of requests for refund.

Q. With respect to another phase of your cross-examination, General Humphreys pointed out that Section IX of the Atomic Energy Act authorizes the Commission to make payments to state and local governments in lieu of property taxes. Now, I don't want to start an argument as to the end result, whether detrimental or beneficial to the tax revenues of the state resulting from the establishment of this project, but tell me this: Has the creation of this area and of this city resulted in substantial tax payments to the State of Tennessee by the private persons brought here, in the way of gasoline tax, privilege tax and sales tax under this same Act?

A. Yes, none of the actions of the Commission have been with a view toward obtaining exemption of the individual in this area who is here by reason of working on the project. In other words, every one of the stores and concessions operated in town collect a sales tax, and I presume they return it to the state, and every one of the citizens living here pay that sales tax. We all purchase gasoline at local filling stations. The seven cents per gallon in that price is paid by [fol. 244] the people. No attempt is made to get an exemption. That is true of all of the taxes that are levied upon individuals in this area.

Q. They are not exempted simply by reason of any connection they may have with this particular project?

A. That's right. Carbide & Carbon operate cafeteria in the plant. As such we have been since the inception of the state sales tax collecting sales tax on the sales of various items, some over the counter and some on meals sold to employees and that tax is returned to the State each month, and there has been no question in regard to that.

Q. Mr. Vanden Bulck, you may or may not be familiar with the provision of the Tennessee Sales Tax Act that provides for part of the revenue being returned by the State to the various local governments, such as cities and counties. Have you heard of that?

A. I have read of that.

Q. Do you know whether or not the community or the City of Oak Ridge has received any such return of revenue from the state?

A. To the best of my knowledge, they have not received such a return.

Q. Do you know why that has been true?

A. I believe the purpose of the Sales Tax Act was to provide funds to increase the educational facilities in the state. We pay directly for the cost of our educational program [fol. 245] in Oak Ridge, so, obviously, we are not returned anything for that purpose. Under the terms of the Sales Tax Act, certain surplus collections are distributed to the counties which are tied in, I believe, with the 1940 census which is the latest census of record, which keeps the distribution on the part of incorporated communities in the county within a certain population range. We are not incorporated in this area. We have no status here and our incorporated status cannot be considered in such distribution of such excess that might be returned to Anderson County.

Q. On the other hand, would you say that Roane County and Anderson County have benefited through the increase in population at Oak Ridge?

A. I expect so. They have benefited, possibly not to the extent that we could benefit if we were an incorporated community, since whatever contribution Oak Ridge makes to the total sales tax picture is spread over the entire state, whereas, Oak Ridge would get a part of it if we had a recognized status.

Q. These operations at Oak Ridge have resulted in the unloosening of tremendous payrolls in this community and in this state?

A. Yes.

Q. Speaking of the roads within the area before this project was established, what kind of country was this through here? Was it heavily populated?

[fol. 246] A. No, to the best of my recollection, it was just rolling farm land. The valleys were good for farm purposes, but those were just grazing land. They had a number of regular country dirt roads with just one paved highway which we now class as the Turnpike coming through at Elza Gate and going out toward Oliver Springs and the Robertsville section on toward Wheat and in that direction.

Q. Were any of those old roads adequate to handle the traffic demanded by the increase in population in the establishment of plants here?

A. No, they were entirely inadequate.

Q. To what extent did the Manhattan District and the

Atomic Energy Commission build or rebuild roads within the area?

A. Well, we built Highway No. 61 from what was just a two-car road to where it is a four-lane divided highway. We built the river road which runs down to the Edgemoor Bridge from what was just about one and one-half car width to two-and in some cases, a three-lane highway. We have built all of these other roads that go through this area from mainly dirt roads or black top roads into substantial highways that could bear the heavy traffic that moves over them.

Q. Did you have to build all of the streets in Oak Ridge?

A. Yes.

Q. What did you do with that one paved road that led through this area?

[fol. 247]. A. That is today, I believe, buried under our Turnpike here.

Q. Was your Turnpike much wider?

A. Yes, the other road was just a two-car road and this is four-car width with a dividing strip.

Q. In general, has it been necessary to rebuild all of the roads and to build supplementary roads?

A. To the best of my knowledge, we built all of the roads that we needed in connection with our operation. There may be some little roads going back over the hills which were connections between farms located in this area, which by reason of their location we had no use for and did not need and therefore, they are abandoned today, I would say. I would like to make one general statement. I have made a lot of statements with regard to what goes on and how these things operate. I have been in position to do that because until June or August of this year I was directly responsible for these operations. Organizationally, I was in position where the various units that conduct these things reported to me. Since that time I have not had any operating responsibility as such, and therefore, other people had to supervise or superintend those operations. Changes have been made in some of the details that I am not aware of since I no longer watch as I did the operation.

[fol. 248] Recross-examination.

By Mr. Humphreys:

Q. Do I understand that this statement is true since June?

A. Since about June or August of this year when we had a reorganization and I moved into the Special Staff position as Assistant to the Manager. Prior to that time, everything I said was to my knowledge.

Q. I believe you did explain that Oak Ridge is not an incorporated town?

A. That's right.

Q. It does not have a charter as a municipality from the State?

A. I believe it does not have the official status as an incorporated town.

Q. On the contrary, for security reasons it has grown up in an area that has been under fence and under intensive guard, and in order to even get in and out of it you have to go through certain security investigations as regards who you are and what your business is in the area; isn't that true?

A. To get in and out of the City of Oak Ridge requires only that somebody knows you and requests a pass. There is no investigation of the individual. The only check that is made is the check against a list of people who are barred from the area by reason of past association with the project or, for instance, we would not invite an international spy [fol. 249] in here.

Q. The truth of the matter is, it never has been actually a town or city except as you might apply that term to a large collection of buildings and people living in close proximity to each other?

A. That's right. It came into existence primarily because we had to have an area such as this for the construction of the plants. It had certain natural advantages which caused this area to be selected because Knoxville or Clinton or Lake City or LaFollette were unable to absorb the numbers of people that they needed to operate the plants, and because there was not any other community here, this community was built.

(Later in the taking of these depositions, Mr. Vanden Bulck made the following statement):

I have examined Exhibit 3 in the Roane-Anderson cases, being Exhibit 2 a in the Carbide cases, and find it to be a correct and full copy of paragraphs 202.1 to 202.3 inclusive of Revision No. 16 of the Manual for Administrative Audits.

Further deponent saith not.

Charles Vanden Bulck, By ———, Court Reporter.

Sworn to before me this 13 December, 1948, ———,
Notary Public.

[fol. 250] The next witness,

ORAL RHINEHART, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. Please state your full name, address and occupation.

A. Oral Rhinehart, age 39, 305 West Outer Drive, Oak Ridge, Tennessee, occupation General Office Manager or sometimes known as Comptroller for Carbide & Carbon Chemical Corporation in the Oak Ridge Area.

Q. How long have you held that position?

A. I have been with Carbide & Carbon in this area since Carbide & Carbon started and that was along in January, 1944, on this job.

Q. Have you held the same position all of the time?

A. I was Assistant Office Manager when I first came here.

Q. When did you become Office Manager?

A. About three years ago.

Q. Will you tell us the duties of your present position?

A. My duties are the supervision of all fiscal matters such as accounting and payroll work, the supervision of and receiving of materials and the storage of such materials, anything that had to do with fiscal affairs.

Q. The contract of Carbide & Carbon Chemical Corporation together with all of the supplements have all been filed [fol. 251] as exhibits 1 and 2 respectively in this case. When

was the first date that Carbide & Carbon started operations at Oak Ridge under its agreement with the United States Government?

A. We first started operations at Oak Ridge in January, 1944, and I was on the job when we first started operations.

Q. Did you take over production and operation of a plant here at that time?

A. We started what is known as the K-25 plant, that is, started the groundwork for it. The plant did not start at that time but that was the groundwork for the operation of the plant.

Q. Were the plant buildings completed?

A. No, it was still under construction.

Q. When completed, you actually took over operation of the plant?

A. That's correct.

Q. And you have operated it until the present time?

A. Yes.

Q. So far as you know, you will continue to operate it for an indefinite length of time?

A. So far as I know.

Q. Does Carbide & Carbon operate any other plants at Oak Ridge?

A. They operate what is commonly known as the Y-12 and the Oak Ridge National Laboratory.

Q. Is the Oak Ridge National Laboratory known as X-10? [fol. 252] A. That's right.

Q. So far as you are permitted by security regulations, would you tell us the functions and work of Carbide & Carbon in these three plants at Oak Ridge?

A. I think I can briefly without disclosing any security regulations. In other words, the K-25 plant is the separation of the uranium isotopes, which is the gaseous diffusion plant. The Y-12 plant is principally now a research work plant in what is known as the electro-magnetic process separation of uranium isotopes. At the Oak Ridge National Laboratory which is sometimes called X-10 is principally research work, basic research work in regard to atomic energy and also the production of radio isotopes. That briefly, is the work carried on at the three installations.

Q. Is all of that work related to National Defense?

A. Yes, it is.

Q. In carrying out its contract with the Government, has

Carbide & Carbon had to engage in an extensive program of procurements?

A. Yes.

Q. And that has been carried on since you first started operating here?

A. That's correct.

Q. In carrying out that program, has Carbide & Carbon established a standard procedure of printed forms for use in each transaction?

[fol. 253] A. That's right, standard purchase order form.

Q. Mr. Rhinehart, I hand you Exhibit 1 already filed to the testimony of the complainants in these cases, and I ask you to start with the original contract No. W-7405-Eng-26 and explain why the deletions have been made from this copy filed in this case and state the general subject matter to which the deletions pertain, the object of this inquiry being to satisfy opposing counsel and the court that the deletions required by Security Regulations are not pertinent to the questions arising in this case relating to the Sales Tax, so if you will take the first page now of the original contract itself and explain the deletions page by page through the contract and the supplements, I would be glad for you to do so.

A. The contract was de-classified principally in regard to amounts of money showing the total cost of the work and the corporation's fee.

On the first page, we have deletions showing the cost of the plant by Titles, and that was the total cost had been struck out from the contract and also the amount showing the fixed fee has been removed.

Q. What are the blots at the bottom and top of the contract?

A. I could not say, Mr. Fowler, without seeing the original contract.

Q. The parts deleted at the top and bottom were not parts of the original contract?

[fol. 254] No.

Q. Mr. Rhinehart, with respect to the blots at the top and bottom of each page or elsewhere through the contract outside of the body of the writing, do you believe that those blots eliminated merely the markings of secret or classified information?

A. I believe that's correct because I know that there is

nothing pertinent to the contract that is not in the body of the writing.

Q. Now turn to page No. 1 and let's proceed.

A. There is one strike-out in the body. It also pertains to the total cost to the Government. On page 2 there is also a strike-out which is relative to the cost of the work under Title I: "Study of Available Knowledge and Information." The same thing under Title II.

Q. The same thing on page 3, under "Article III-B Title III"?

A. That's correct.

Q. The same thing in Title IV?

A. Title IV, page 4, the same thing. This next one is such a large one I would not like to make a statement until I see the original contract.

Q. All right, we will wait until later to tell about that deletion on page 5.

[fol. 255] A. On page 6 is also a strike-out in regard to the cost of the work under Article V. Also a strike-out in regard to the fixed fee.

Q. Now, you have before you a full copy of the contract with which you are comparing these deletions?

A. Yes.

Q. Going back to page 5, Mr. Rhinehart, can you explain the general subject matter of the deletion there?

A. The general subject matter of that deletion is in regard to the product which is to be produced at the K-25 plant.

Q. And you have already indicated the nature of that, so far as you care to do so?

A. That's correct.

Q. Page 6-a.

A. 6-a is a strike-out in regard to the fixed fee schedule.

Q. That's all that those relate to?

A. That's all.

Q. Page numbered in the lower right-hand corner 5, and below that 77.

A. That's right. There is a strike-out pertaining to how the first fixed fee shall be paid. The next I find here I believe is on page 106.

Q. In the lower right-hand corner?

A. No, it is in Supplemental Agreement No. A. There is

a strike-out in regard to the total estimated cost. Page 111 is also a strike-out.

[fol. 256] Q. Page 108.

A. Oh, I missed one?

Q. At the top.

A. Oh, yes. I believe that was the word "secret".

Q. What is the word that the blot obscures on the exhibit?

A. The words are, "directions received by the bank." Page 111 there is a strike-out in regard to the cost of the work.

Q. All right.

A. Page 115. This strike-out is in regard to the amount that was stated in the letter of intent, stating the sum we should not exceed,

Q. Now, I believe that completes the original contract and letter contract. Go to Supplemental Agreement No. 21 and work through in reverse order.

A. On page 1 of Supplemental Agreement No. 21 there is a strike-out pertaining to the cost of the work through fiscal year 1947, and also strikes out a figure that was previously stated in the contract in regard to the total cost of the work through fiscal year 1946.

Q. Your last figure refers to sub-paragraph D?

A. That's correct. The next one is on Supplemental Agreement No. 20 where there is a large strike-out. I would like to refer to the original contract.

Q. Mr. Rhinehart, this Exhibit has been identified as an accurate and a full copy of the Contract and Supplemental Agreements. Now, Supplemental Agreement No. 20 does [fol. 257] not appear to bear the signatures of the parties. What is your recollection as to whether Supplemental Agreement No. 20 ever went into effect?

A. Mr. Fowler, to give you an answer on that the only way to do that would be to check my copy of the contract at K-25, which I could do by telephone if that would be admissible.

Mr. Fowler: Will you agree to that?

Mr. Humphreys: Yes, or at any time you want to.

Mr. Fowler: All right, we will save that question.

There may be another one.

Q. That relates also to the second page.

A. Yes, the whole Agreement looks like — has not been executed. Supplemental Agreement No. 19 has removed the estimated amount and the fixed fee in connection with the operation of the Y-12 plant. On page 2 of that same Supplement, I would like to refer to the original.

Q. Page 2 of Supplement 19?

A. Yes. That paragraph has been removed as to the scope of the work that we shall do at the Y-12 plant. The only statement I can make is it gives the scope of the work to be performed at the Y-12 plant.

By Mr. Humphreys:

Q. In undertaking to define the scope of the work, does the deleted paragraph refer to the authority of Carbide & Carbon in the discharge of the work or does the paragraph [fol. 258], merely define the nature of the work that is to be done?

A. It defines the nature of the work that shall be done.

By Mr. Fowler:

Q. All right.

A. On page 15 of Supplemental Agreement No. 19 there is also a strike-out in regard to the estimated cost of the work and also a strike-out of the fixed fee.

Q. Mr. Rhinehart, that is page 3 actually of Supplement 19?

A. That's right, page 3, Supplement 19, that's correct. On Supplemental Agreement 11, page 1 there is a strike-out in regard to the total cost of the work. On page 2 of the same Supplement, there is a strike-out in regard to the cost of closing out the contract. In Supplement No. 9, page 1 there is a statement stricken out in regard to the cost of operation of part of the K-25 plant, commonly called the K-27. On page 2 of the same Supplement, there is a strike-out in regard to the total cost of the work, and I would like to also refer to the signed copy. There is a blot stricken out on the Supplement in regard to the schedule of fixed fee for operation of the plant.

Mr. Humphreys: What do you say of the paragraph on page 3?

The Witness: That's a continuation of the fixed fee sched-

ule. There are two other deletions on page 3 in paragraph 2 and on that page there is a statement struck from the [fol. 259] record in regard to the estimated cost of the work under Article V-D of the Supplement, and also the amount of the fixed fee is stricken from the record. Under Article V-E on page 4 of the estimated cost of the work has been removed and the amount of fixed fee has been removed. On the same page the estimated cost of the work under Article V-F and the fixed fee therefor has been stricken from the Supplement. Supplement No. 6—this is the Letter Supplement No. 6 page 2 there is a strike-out in regard to the total payments in which a limitation is set on total payments. Supplement No. 4, page 2—may I refer to the original contract on that?

(Looks at original contract.)

That strikes out the figures changing the costs under Article II-B of Title II. Supplement No. 2, I would like to refer to the contract. That paragraph deletes the scope of the work to be performed under Supplemental Agreement No. 2; that is the nature of the work. Also the same reasons for the strike-out on the top of page 2 of Supplement No. 2. Paragraph 2 changes the amount of money involved. I believe that completes the contract and the supplements.

Q. Mr. Rhinehart, I now hand you Exhibit No. 2 filed in this case consisting of Supplemental Agreements, Nos. 22 [fol. 260] and 23 which were executed since the filing of the original bills in these cases. I will ask you to go through the same process on those?

A. Supplemental Agreement No. 22 page 3, the fourth paragraph, there is a strike-out in regard to the total cost of the work under Article V-I. On page 4 of the same Supplement there is a strike-out in regard to the fixed fee. On page 5 there is a strike-out of the total amount of money to be obligated by the Government with respect to this contract. Page 11 of Supplement 22, there is a strike-out in regard to the total payments that will be made to the employees under a Medical Expense Plan. There is a strike-out on page 12 of the amount of money in regard to the same plan. Supplement No. 23 there is a strike-out of the total amount of money to be obligated by the Government through fiscal year 1949. That's all.

Q. Now, Mr. Rhinehart, would you call your office and find out whether or not Supplement No. 20 was ever actually executed and went into effect?

A. Yes. (Calls on telephone.) We have no record of Supplement No. 20 ever being executed.

Mr. Fowler: General Humphreys, we want to be sure that there won't be any objection to the contract as it is put in this form, which seems to be the fullest form permitted by Security Regulations of the United States Government. [fol. 261] Mr. Humphreys: I think with the statement that has been made, and assuming of course that they are true statements, which I am assuming, and observing that the statements were made by comparison between the Exhibit and the original contract, I am convinced that the matters which have been deleted are not in relation to the matters in controversy in this litigation, and on that account do not intend to interpose any objection to the introduction of the contracts on account of the deletions.

Q. Now, Mr. Rhinehart, I am going to ask you a few questions about the financing of the operations of Carbide & Carbon Chemical Corporation under this contract. Where does the money come from?

A. It comes directly from the Government.

Q. Has Carbide & Carbon employed any of its own money in these operations?

A. At no time have they employed any of their money.

Q. I infer, therefore, that even before operations started by Carbide & Carbon the Government advanced initial funds to finance the operation?

A. That's right, before we even started operations in Oak Ridge they had advanced us initial funds when we operated out of the New York office.

Q. Is there at the present time a modification of the contract in process relating to the matter of advancements [fol. 262] by the Government?

A. There is a change. In theory it is the same. They are still making advancements but only reimbursing us once a month against the advance.

Q. What has been the situation heretofore?

A. Previous to October, we submitted vouchers daily or several a day. Now we submit one at the end of each month reimbursing the original advanced amount.

Q. Has Carbide & Carbon any property in its possession

on this project that it did not regard as Government-owned?

A. Yes, they have four company-owned cars purchased and paid for with Corporation funds. I might also state here that we do occasionally buy a few pieces of recreation equipment from Corporation funds, and the reason for that is that the Corporation does not wish to be placed in a position of being accused by anyone at any time of advertising at Government expense, and it could be considered possibly, a basketball uniform, for example, having on it "Carbide & Carbon" and considered advertising matter. For that reason the Corporation pays for those items itself.

Q. With respect to such items as you have mentioned, that is a matter that could be regarded as possible advertising matter and the four automobiles, we are not taking the position that Carbide & Carbon is exempted from the State Sales Tax?

[fol. 263] A. No, that's correct. There is no question on those particular items.

Q. Broadly, as to purchases by Carbide & Carbon in the actual discharge of its contract, what has been the attitude of Carbide & Carbon as to who owns those purchases when they are acquired?

A. It has been our opinion that the rights were always vested in the Government.

Q. Have you so treated this property?

A. Yes, always have.

Q. Is Government ownership indicated by a stamp or label placed on each article?

A. The property that is large enough to account for separately and individually is marked with an identifying stamp at the time of receipt, stamped directly into the equipment itself or by a label attached to the equipment.

Q. What lettering or numbering does that label bear?

A. That label at the K-25 plant bears the initials "U.S.A." meaning "United States of America" and "C&CCC", followed by a number. The same system is followed at the Y-12 plant and all numbers are preceded by a "Y". At the Laboratory, they are preceded by the initials "ORNL". Of course, all those are placed there for identification purposes. In fact, I might say that in most cases that number is applied direct to the Purchase Order before receiving the material.

[fol. 264] Now, in order that this record shall present a complete including of documents and papers used in pro-

curement procedure of Carbide & Carbon, I will ask you to file certain exhibits. The first is to be filed as Exhibit 3, which is a Purchase Requisition, being the same paper filed as page 1 of Exhibit B to the original bill in the first Carbide & Carbon case. Do you identify that as an accurate copy of that Purchase Requisition and file it as Exhibit 3 to the testimony of Complainants?

A. That is our form and that is a typical copy of the Requisition in question. I so file.

COMPLAINANTS' EXHIBIT 3

Oral Rhinehart

Q. Is that a typical requisition form?

A. Yes, it is.

Q. With whom do requisitions originate, employees of Carbide & Carbon or employees of the Atomic Energy Commission?

A. They originate with the employees of Carbide & Carbon.

Q. I will ask you to file next, as Exhibit No. 4 the paper which I now hand you, and ask you to tell us what it is?

A. That is a request for quotations sent out to various prospective vendors as mailed by the Purchase Department in order to secure bids on the desired materials. I so file.

COMPLAINANTS' EXHIBIT 4

Oral Rhinehart

[fol. 265] Q. Is that the first paper that is prepared and sent out after the requisition is received?

A. Yes, it is.

Q. Has that form been in use by Carbide & Carbon since it started operations here?

A. To the best of my knowledge, it has been the same form or similar form.

Q. Containing substantially all of the same material?

A. Yes, the same matter, that's right.

Q. Do you commonly refer to that form Exhibit 4 as an "Inquiry"?

A. That's right.

Q. I next hand you the Inquiry Form for Y-12 and ask you to identify that and file it as Exhibit 5?

A. That is a form used by the Y-12 plant.

Q. When did Carbide & Carbon take over operation of the Y-12 plant?

A. May 1st, 1947.

Q. Has that same form been used since you took over Y-12?

A. I believe so, the same form has been used.

Q. And you file that as Exhibit 5?

A. Yes.

COMPLAINANTS' EXHIBIT 5

Oral Rhinehart

[fol. 266] Q. I next hand you Inquiry Form for plant X-10 and ask you to identify that and file it as Exhibit 6.

A. That is the form that is used as an Inquiry Form at plant X-10 and I will file it as Exhibit 6.

COMPLAINANTS' EXHIBIT 6

Oral Rhinehart

Q. When did Carbide & Carbon take over X-10?

A. March 1st, 1948.

Q. Has that same form been used since taking over X-10?

A. To the best of my knowledge, it has been used.

Q. I next ask you to refer again to Exhibit "B" to the original bill and identify and file the Purchase Order therein set forth.

A. The Purchase Order set forth is a photostatic copy of Purchase Order 27709.

Q. Is that the Purchase Order form that has been used by Carbide & Carbon since it started operations here?

A. Yes, it is.

Q. Do you identify that as being an accurate copy of the Purchase Order actually used in the purchase from the Fisher Scientific Company?

A. I do.

Q. And you file it as Exhibit 7?

A. I do.

COMPLAINANTS' EXHIBIT 7

Oral Rhinehart

[fol. 267] Q. Calling your attention to certain statements upon this Purchase Order, has your Purchase Order Form always borne the language appearing near the top left-hand

corner "Acting under U. S. Government Contract, W-7405-ENG-26"?

A. It has always borne that inscription.

Q. I also call your attention to the typewritten letters and numbers, USA-C&CCC-192101, and ask you what that means?

A. That is the number I referred to a short time ago as being the property identification number which is stamped or placed directly on the equipment at the time of receipt.

Q. Has it been the practice to select the number and place it on the Purchase Order even before the goods are received?

A. It was not at first but it is our established practice to do that.

Q. Can you tell us whether that practice was established as long ago as May 31, 1947, and the reason I pick that date is because the Sales Tax Act went into effect June 1st, 1947?

A. I don't know the exact date that we started this procedure, but I can say that the only reason it was never placed on there from the start is due to the fact that all of the routines and procedures just had not been worked out at the time. Mr. Bernheim may be able to tell you the exact date it started, but I don't know the exact date.

Q. Now, that Exhibit No. 7 includes the matter printed [fol. 268] on the reverse side of the Purchase Order, and I direct your attention to the first paragraph under "Terms and Conditions", reading as follows:

"This Order is placed for the benefit of, and is assignable to, the United States Government. Carbide & Carbon Chemical Corporation's only liability hereunder shall be to pay for material or services ordered hereunder out of funds supplied by the United States Government under Contract W-7405-ENG-26, which has agreed under such contract to supply such funds. In the event of assignment to and acceptance by the Government seller agrees to look solely to the Government for payment under this Order. This Order does not bind or purport to bind the United States Government."

Has that language always been present upon the Purchase Orders of Carbide & Carbon?

A. Yes, it has.

Q. How many copies of Purchase Orders are made, just approximately?

A. In the neighborhood of about eleven. —

Q. Do you recall whether there is any difference between the first copy and the other copies?

A. All copies of the Purchase Order do not have these terms on the back. The original copy, all acceptance copies [fol. 269] that go to the vendors have these identical same instructions and terms.

Q. And the printed "Instructions, Terms and Conditions" appearing on the back are omitted from most of the copies?

A. That is right, because they are work copies because information is placed on the back of the Order, such as the Invoice number.

Q. Such copies that do go to the dealer do have, however, the printed material on the back?

A. Yes.

Q. And particularly the copy signed by the dealer which you call the Acceptance Copy does contain the printed material on the reverse side?

A. That's true.

Q. Looking at the next page of Exhibit "B" to the original bill, which is the invoice of the supplier, is that a form adopted by Carbide & Carbon for the use of suppliers?

A. That's right.

Q. Do you identify the invoice of the Fisher Scientific Company heretofore filed as page 4 to Exhibit "B" to the original bill in the first Carbide & Carbon case and file it as Exhibit 8?

A. It is a photostatic copy of the original invoice received from the Fisher Scientific Company and will be filed herewith as Exhibit 8.

COMPLAINANTS' EXHIBIT 8

Oral Rhinehart

[fol. 270] Q. Do most of the suppliers conform with the wishes of Carbide & Carbon and use this standard form of Invoice?

A. I would say 60 to 75 per cent use our standard Invoice form.

Q. Why did you adopt the idea of preparing a form of invoice for suppliers to use?

A. For our Accounting Records it makes a much nicer file if we can have it all on the same form and same size paper, and also eliminate bills and invoices. That is all stamped in the upper right-hand corner of the vendor's invoice, which is the information we have to fill in in the invoice, and for the Audit Section it is much better if we can do that in the same place on all of the invoices.

Q. It's a matter of considerable convenience?

A. Yes.

Q. I notice that this invoice has written in it in long-hand, "USA-C&CCC-192101". Do you know when that was written on the invoice?

A. I couldn't tell you that, Mr. Fowler, when that was placed on there.

Q. The next paper I hand you and ask you to identify and file—

A. This piece of paper just handed me is a "Stock Record Card" which we used to record what we term as [fol. 271] Class B Property and Class B Property is any item of property costing \$25.00 or more that can be identified, and its identity retained throughout the plant. This Stock Record Card is used at all installations operated by Carbide & Carbon in Oak Ridge.

Q. That Stock Record Card bears the same number 192101 as the documents relating to Fisher Scientific Company purchase bears. Does that mean that it covers the same property covered by the other documents?

A. That's right.

Q. When is the Stock Record Card made?

A. It is made immediately upon receipt of the material.

Q. Is it made before or after the Receiving Report is prepared?

A. It is made from a copy of the Receiving Report which is received in our property Department.

Q. I will ask you to identify and file the Receiving Report which appears as page 4 of Exhibit B to the original bill. Is that a standard form of Receiving Report of Carbide & Carbon?

A. That's correct.

Q. And was used in connection with the same purchase we have been talking about?

A. Yes.

Q. When is that Receiving Report prepared?
 [fol. 272] A. It is prepared immediately upon receipt of the material. When I say immediately, I will say within a 24-hour period. Of course, it is not all possible within an hour, but 24 hours.

Q. Who signs it?

A. It is signed by the head of our Receiving Department.

Q. In the case of this particular Receiving Report was it Mr. Perry?

A. Yes.

Q. Who put the signature on there which appears to be W. M. Chester?

A. That's the representative of the Atomic Energy Commission.

Q. Does his signature go on there at the same time or immediately after your representative signs?

A. Immediately after.

Q. I will ask you to file that Receiving Report as Exhibit 9.

A. I file this Receiving Report as Exhibit 9.

COMPLAINANTS' EXHIBIT 9

Oral Rhinehart

Q. Now, I will ask you to file the Stock Record Card photostat as Exhibit 10.

A. The Stock Record Card photostat is filed as Exhibit 10.

COMPLAINANTS' EXHIBIT 10

Oral Rhinehart

[fol. 273] Q. With respect to the Stock Record Card, I notice that the middle column is headed, "USA Property. Numbers". Does that mean that the property was regarded as being property of the United States?

A. That's right.

Q. Is this Stock Record Card form, has it been used since Carbide & Carbon started operation?

A. That's correct.

Q. And it is used as to all three of the plants?

A. That's right.

Q. Now, will you file as Exhibit 11 the photostatic copy of check which appears as page 5. of Exhibit B to the original bill?

A. I file the photostatic copy of the check as Exhibit 11.

COMPLAINANTS' EXHIBIT 11

Oral Rhinehart

Q. That was a check given by Carbide & Carbon to the supplier in payment of the item we have been talking about?

A. That's right.

Q. Will you file the "Public Voucher" as Exhibit 12 consisting of four pages the last of which is some printed matter which appears on the reverse side of one of the other pages.

A. I file Public Voucher as Exhibit 12 showing the request for reimbursement from the Atomic Energy Commission.

[fol. 274]. Q. And this particular voucher includes on the second page the Fisher Scientific Company item?

A. That's right.

Q. Enclosed within red lines. Going to the second of the Carbide & Carbon cases, the first case involves the Use Tax that is where Carbide & Carbon bought property from a supplier outside of Tennessee. The second case in which the Diamond Coal Mining Company is a party involves the Sales Tax, and that is a case where Carbide & Carbon bought property from a supplier in Tennessee, and it is necessary to file a corresponding set of exhibits in that case also. The first page of Exhibit B to the original bill in the Diamond Coal Mining Company case appears to be a "Purchase Requisition" relating to the coal involved in that transaction. Will you identify and file the Diamond Coal Mining Company Purchase Requisition as Exhibit No. 13?

A. This is a photostatic copy of the Purchase Requisition for coal to be purchased from the Diamond Coal Mining Company and I file it herewith as Exhibit 13.

COMPLAINANTS' EXHIBIT 13

Oral Rhinehart

Q. Was the same Inquiry Form used in the case of the Diamond Coal Mining Company purchase as you have already filed as an exhibit?

A. Not necessarily. Such orders as contracts for coal may be initiated, you might say, more or less on a personal [fol. 275] basis or by contacting by phone, and arranging the business particulars and so forth. Of course, the sup-

pliers of coal are more limited than the vendors of ordinary supplies, and that is the reason.

Q. Do you know whether or not any Inquiry Form was used in this particular transaction?

A. I could not make such statement in this particular case.

Q. Would Mr. Bernheim know?

A. He might be in position to make such a statement.

Q. I will ask you to next identify and file a photostatic copy of the "Purchase Order" used in the Diamond Coal Mining Company case and file it as Exhibit 14 including both the front and back sides.

A. The photostatic copy of Purchase Order No. 33741 placing the order with the Diamond Coal Mining Company, I file herewith as Exhibit No. 14, both the front and the back of the Purchase Order.

COMPLAINANTS' EXHIBIT 14

Oral Rhinehart

Q. Next, I ask you to identify and file the invoice from the Diamond Coal Mining Company which appears to be on a standard form provided by Carbide & Carbon as Exhibit No. 15.

A. This is a copy of the invoice received from Diamond Coal Mining Company for part of the order in question and I file it herewith as Exhibit No. 15.

[fol. 276] COMPLAINANTS' EXHIBIT No. 15

Oral Rhinehart

Q. I notice with respect to the Purchase Order and the Invoice also that apparently the USA-C&CCC number does not appear. Is that due to the difference in the kind of material, that is that coal is consumable in use?

A. That's right, it is in use and cannot be identified and retain its identity.

Q. I will ask you to next identify and file as Exhibit No. 16 the "Receiving Report" which appears as page 5 of Exhibit B to the original bill, which apparently covers some number of tons or carloads of coal falling under the Diamond Coal Mining Company contract?

A. This is a photostatic copy of Receiving Report cov-

ering seven carloads of coal received on the Purchase Order, and I file it herewith as Exhibit 16.

COMPLAINANTS' EXHIBIT 16

Oral Rhinehart

Q. Of course, where a great volume of coal is ordered, it comes from time to time and you will have a great number of Receiving Reports?

A. That's correct.

Q. Do you make any Stock Record Card on coal?

A. We have a Stock Card but it is not this kind of a card. It is more or less of a large ledger sheet.

Q. That is because of the difference in nature of coal?

[fol. 277] A. Yes, in the nature of the material, that's right.

Q. Does that paper which you have described as a ledger sheet carry on it the same headings or the same notice of ownership that your Stock Record Card carries?

A. I don't believe it has that kind of a notation on those consumable supply stocks.

Q. What is the purpose of the Stock Record sheet, to simply keep a current account of inventory?

A. That's right, it is so as to know at all times how much coal is on hand and to control cost records.

Q. Was the attitude of Carbide & Carbon with respect to the ownership of coal or other expendable materials the same as with respect to the ownership of pulverizers, machinery and other equipment?

A. It is identically the same.

Q. Do you know whether the same inspection procedure was used with respect to coal and other expendable materials as with respect to permanent stuff?

A. Oh, yes, our procedure was exactly the same.

Q. I next ask you to identify and file as Exhibit 17 the check of Carbide & Carbon Chemical Corporation to the Diamond Coal Mining Company, or rather a photostatic copy thereof including both the check and the attached statement?

A. Photostatic copy of the check and the attached statement is a copy of the payment to the Diamond Coal Mining [fol. 278] Company and is filed as Exhibit 17.

COMPLAINANTS' EXHIBIT 17

Oral Rhinehart

Q. The amount in that check of course was only part payment of the whole amount contracted for?

A. That's right.

Q. I ask you to identify and file as Exhibit 18 the Public Voucher prepared by Carbide & Carbon addressed to Atomic Energy Commission including a request for reimbursement for the amount paid to Diamond Coal Mining Company, this consisting of four pages?

A. I identify this voucher as a photostatic copy of that presented to the Atomic Energy Commission requesting reimbursement for expenditures regarding payments made to Diamond Coal Mining Company filed as Exhibit 18.

COMPLAINANTS' EXHIBIT 18

Oral Rhinehart

Q. Now, returning to the general picture, for what purpose and in what way has Carbide & Carbon used the purchases of property which it has made under its Government contract?

A. Strictly for the operation of the plants at Oak Ridge.

Q. Can you give us some examples to fill out some of the details in the picture.

A. I could follow through on the coal. The coal is used to produce steam and steam to produce electricity and electricity in turn to operate the gaseous diffusion plant.

Q. That was in connection with K-25?

A. That's right.

Q. And this pulverizer that was bought from the Fisher Scientific Company, Exhibit 9, what was that used for?

A. That is possibly for the coal pulverizer. I am not sure that is the same equipment without referring to other records.

Q. Have you had to buy materials and tools and so forth of a great number of different kinds and uses?

A. Oh, yes, of all variety of materials and tools in large quantities.

Q. And you say all of those have been employed only in the performance of this contract and the supplements?

A. That's right.

Q. It appears from Supplement No. 8 to the contract that the Contracting Officer reserved to himself the right to designate in writing the place or places at which title to purchases should pass to the Atomic Energy Commission or the United States Government. I will now ask you, has the Contracting Officer ever exercised his rights under that provision, ever designated in writing or otherwise the place at which title to procurements pass to the United States?

A. To the best of my knowledge, he has not.

Q. Has the Contracting Officer and the representatives of [fol. 280] the Commission here at Oak Ridge been fully familiar with the practices of Carbide & Carbon in receiving property?

A. I think they have.

Q. As well as other practices in buying property?

A. That's true.

Q. And the practice has been uniformly to accept title from the vendor directly into the United States Government at time of receipt?

A. I would say that it has always been assumed at least that the title was vested in the Government at the f.o.b. point, that is, at the vendor's factory or plant site, on the terms of the Purchase Order.

Q. Has there ever been any understanding or practice by Carbide & Carbon itself to take title to any of this property coming under the Government contract?

A. No, never has been.

Q. Are you familiar with the inspection procedure that is gone through with at the time of receipt of goods?

A. Generally, yes.

Q. Can you tell us what it is?

A. Generally speaking, upon receipt of the material it is examined by employees of our Receiving Department. If everything is in order, Receiving Reports are prepared and routed to the Invoice Audit Section for the payment of the bills. Of course, if the goods are not in order, then the necessary steps are taken to file claims for damage or shortage.

[fol. 281] Q. I believe you made some reference to the attaching of this Government stamp or label. Just when is that done with respect to the time of receipt of goods?

A. That would be attached immediately after it is inspected and found to be in satisfactory condition.

Q. Is the label attached before the Receiving Report is completed or contemporaneous with the preparation of the Receiving Report?

A. I am not sure how it works into the procedure. Mr. Perry I am sure can tell you the exact time it is attached.

Q. Does the Government have a representative participating in the inspection made at time of receipt?

A. They did have but don't have at the present time.

Q. Did he inspect all goods received when that Government inspection procedure was being followed?

A. I don't think they checked all receipts. They spot checked to the best of my knowledge. They spot checked the receipts.

Q. You say that the Government has quit spot checking. How long has that been true?

A. I guess that was four or five or six months ago.

Q. Is the Atomic Energy Commission now relying upon the contractor's inspection, that is, Carbide & Carbon's inspection?

[fol. 282] A. They are relying on the contractor. As I understand, they still have the prerogative to check if they desire.

Q. Do you know whether or not any inspections relating to the acceptability of the goods are made by the Atomic Energy Commission after the goods are received at some later time?

A. Not to my knowledge, they don't.

Q. They do have inspections for the purpose of checking your inventories and whether the issues of materials was authorized?

A. That's right.

Q. Do any communications customarily pass between Carbide & Carbon and suppliers beyond the papers which we have filed and discussed here?

A. Oh, possibly letters or telegrams in connection with the procurement of material.

Q. Do you know whether or not any suppliers have ever requested information as to the contractual relations of Carbide & Carbon with the Atom Energy Commission or the United States Government?

A. No, to my knowledge, we have had no inquiries of that nature.

Q. What were the usual terms of payment on procurements?

A. Well, I am not sure that you consider that there were any particular terms. It depends on the vendor more than anything else, according to what his terms of sale were.

[fol. 283] Q. Have you ever had any suppliers so cautious as to retain title to the goods against payment?

A. I believe we have had a case or two where they required COD.

Q. Required what?

A. They would ship on COD basis but that has been very few.

Q. Has the same procurement procedure including procedure on receipt and inspection and recording and treatment of goods been followed at all three plants?

A. Yes.

Q. So far as you know, will this procedure continue to be adhered to?

A. As far as I know, it will be.

Q. Has there been any difference in the treatment of shipments received from outside of Tennessee from those received from inside of Tennessee?

A. None whatever. Our methods of handling are exactly the same.

Q. Does Carbide & Carbon carry any insurance on its property or these purchases which you have said Carbide & Carbon regard as Government property?

A. No, sir, no insurance.

Q. Why it that?

A. Because it is not Government policy to carry any type of insurance.

[fol. 284] Q. Referring to the photostatic copies of the two checks which you have filed, one of them to the Fisher Scientific Company and the other one to the Diamond Coal Mining Company, they appear to be drawn on the Hamilton National Bank of Knoxville and signed by Carbide & Carbon Chemical Corporation, "Contract Account". Will you state whether or not those checks were paid out of money advanced by the United States?

A. That's right. That is the meaning of the Contract Account in connection with the Title of the Account. There are no other funds enter that Account except those advanced to us by the Government.

Q. It is not simply a reimbursement procedure but a disbursement by you of funds already advanced?

A. That's correct.

Q. Is that true also of all purchases by Carbide & Carbon under its contract with the Government?

A. That's right.

Cross-examination.

By Mr. Humphreys:

Q. During the course of your direct examination, Mr. Rhinehart, you referred to the fact that Carbide & Carbon was reimbursed by the Government. Do I understand you to mean that the Government upon your voucher repays enough money to maintain a certain fund?

[fol. 285] A. They advance us a certain sum to start off with, say they give us \$500,000.00 to operate with for a given period of time. We make expenditures out of the fund, say we spent \$100,000.00, we submit a voucher and they reimburse \$100,000.00. It is a revolving fund.

Q. They maintain a certain deposit for you against which you can draw?

A. Yes.

Q. So when you speak of reimbursement they are actually reimbursing a fund that they maintain?

A. That's right.

Q. Now, the Purchase Order Form which you filed as an exhibit contains "Terms and Conditions" that were referred in the course of your direct examination, which are as follows, that part that I am interested in reads as follows:

"This Order is placed for the benefit of, and is assignable to, the United States Government."

I would like for you to file as an exhibit to your cross-examination a copy of the Assignment of this material that was purchased on this Purchase Order Form, the procedure of which you have described, as an exhibit to your cross-examination.

A. We have never had occasion that I know of to assign directly to the Government any material other than the facts; so far as we have been concerned, it has always been [fol. 286] there. We have never had any occasion to close

out our records. I don't know whether it is relevant to the case or not but we have accepted materials of another contractor here on the area that had been assigned to the Government and re-assigned to Carbide & Carbon. We have never had occasion to do that.

Q. Then, do I understand it that in no case has any of the material that you bought been assigned to the United States Government in accordance with this statement?

A. That's correct.

Q. These Terms and Conditions contain this further statement:

"This Order does not bind or purport to bind the United States Government."

A. I don't know whether I can interpret the exact meaning of that or not. I believe what it means is that the vendor actually looks to Carbide & Carbon as the contractor for payment, and that since we are the contractor that they cannot look to the Government for payment.

Q. As a matter of fact, the property is sold to Carbide & Carbon and is only assignable to the Government on the collection of a payment?

A. Well, I think as far as the vendor is concerned, he is going to look to use for payment.

Q. And you are not authorized to use the name of the United States Government or bind the United States Government, but only to bind yourself in the making of this Purchase Order; that's correct, isn't it?

A. I believe that's correct.

Q. Your company carries on, you might say, three distinct types of operation, in its operation of K-25, X-10 and Y-12. Is that true?

A. That's right.

Q. Now, as regards its operation of K-25, your company undertakes under the Terms and Conditions of this contract to produce a specified and determined amount of material; that's correct, isn't it.

A. That's correct.

Q. The processes by which that material is produced have been more or less fixed by experimentation and you all pursue those processes under your contract in the production or the processing of that material so that it is not necessary to make purchase of materials with which to work out that

process, I mean of machinery, tools and things of that nature?

A. Well, that is partially true. Of course, our research men are always experimenting for more efficient ways and better ways to do something and if they through their scientists figure out that there is a cheaper method or a better method for doing it we would make the necessary revisions in equipment.

Q. You then would buy the materials and supplies necessary to make the change in the process?

A. Yes, unless it was a major construction job when we would call on the construction contractor.

Q. When you buy the materials and supplies they are all bought on this Purchase Order?

A. The same Purchase Order form.

Q. And those materials and supplies are delivered into your possession and remain in your possession until your contract with the Government is terminated?

A. That's right.

Q. At which time you deliver the property that you have on hand together with such raw materials as have been manufactured, you deliver those over to the Government and account to the Government for them?

A. That would be true.

Q. Until that time, until the time of delivery and accountability under the contract, the Government has no possession of any of those materials or supplies. They are all in your possession?

A. They are all in our possession but we are accountable to the Government at any time, whether at the close of the contract or at any time during the performance of the contract.

Q. And you are supposed to have them?

A. Yes.

Q. You have possession of and use those materials and supplies in producing a specified quantity of material and for the production you are paid cost plus a fixed fee; is that correct?

A. That's correct.

Q. In the production of those materials, I mean in the production of the matter that you make at your plants, without going into what it is or asking you about what it is, in your use of these materials and supplies you are not restricted or regulated or controlled by the Atomic Energy

Commission, that is, they don't pay any representatives that undertake to tell you how to do it because actually the Atomic Energy Commission does not have the necessary know-how, but that know-how is possessed by Carbide & Carbon and its representatives, and that's the reason they are employed; isn't that true?

A. That's right.

Q. So again there actually is no reservation of control or exercise of control over the manner in which Carbide & Carbon will produce the required amount of material; is that true?

A. It is a matter of control. Of course, they have the right to tell us how much our production should be and how much they expect to have produced and the purity of the product. Of course, they have another control through budgetary control as to how much we are permitted to expend in each fiscal year.

[fol. 290] Q. That's determined in advance?

A. Yes.

Q. And your contract is modified by that annual determination and you operate under that for a yearly period?

A. That's correct.

Q. As a matter of fact, I believe it has been mentioned heretofore that determination as to the amount of material you should make is made by the President of the United States under the Atomic Energy Act.

A. That could be. I am not familiar with that.

Q. Referring back to some of the exhibits you have filed, will you please explain to me these dates on Stock Record Card which is marked Exhibit No. 10. You have a copy of it there. Now, it seems that there appears on this card the dates of November 30th, 1946 and December 31st, 1946.

A. That's these two dates here (indicating).

Q. Inasmuch as this Order originated in September, 1947, what are the debits and credits in the amount of \$305.00 on the dates of November 30th, 1946 and December 31st, 1946, why do they appear on that card?

A. At that time, I believe we were attempting to get back reconciliation of our stock cards against our journal and ledger account for property, and that date was stamped on there indicating the date we were making this reconciliation, that is, November 30th and December 31st, 1946.

[fol. 291] Q. How would you make a reconciliation in

November and December, 1946 in regard to a property item purchased in September, 1947?

A. This Stock Card note is carried for the same type of equipment. It is not just set up for one individual piece of property but might be set up for a dozen or more of the same type of property.

Q. In other words, the date of November 30th, 1946 would relate to property item No. 182338?

A. That's right.

Q. Whereas, that item that you were explaining bears No. 192101?

A. That's right.

Q. And so that date up there is in relation to that other item?

A. Yes, I might explain a little further. Since there is no further entry on there after December 31, 1946, after that attempt to reconcile we gave up the idea of reconciling the balance, due to the fact that we do not put values on a great deal of the property, since it had been transferred to us by the construction contractor without value.

Q. You have been asked on direct examination in regard to Title VIII, paragraph 4, also Supplement No. 8 of the Carbide contract in regard to title to material, tools, machinery, equipment and supplies for which Carbide & [fol. 292] Carbon is entitled to reimbursement, and you stated that so far as you are advised the Contracting Officer has never designated any point or time at which title to material, tools, machinery, equipment and supplies which have been purchased by Carbide & Carbon shall vest in the Government. I will get you to state whether or not the United States Government or the Contracting Officer on its behalf has ever executed any written notice to Carbide & Carbon of acceptance of title to any of the articles of property, material, tools, machinery, equipment and supplies, and if it has will you file such written notice as an exhibit to your cross examination?

A. To the best of my knowledge, we have never received any written notice from the Government to that effect.

Q. And you of course are unable to file any?

A. That's right.

Redirect examination.

By Mr. Fowler:

Q. On cross-examination, Mr. Humphreys went into the Terms and Conditions which appear on the back of the Purchase Order, and I believe you said that your understanding would be that the supplier probably looks to Carbide & Carbon for payment instead of the United States Government. Now, I call your attention to the other words of that paragraph that he read from on the reverse side of the Purchase Order which in substance say that Carbide & Carbon shall [fol. 293] not be liable beyond the funds supplied by the Government. Was it your understanding that Carbide & Carbon did obligate itself without limit, or was its obligations restricted to those funds?

A. No, the obligation is restricted to the funds, certainly.

Q. I believe you testified that this written provision has appeared on all of the Purchase Order contracts?

A. That's right.

Q. And they become a part of the contract with every supplier?

A. That's correct.

Q. So that the net result was that the Government fund was liable although the Government itself was not liable; is that correct?

A. To clarify the statement of course you would say that the vendor would look to the corporation for payment to them, would never come directly to the Government for payment, but Carbide & Carbon is only liable for payment to that vendor from funds furnished to us by the Government.

Q. Just like it says on the back of the Order?

A. That's right.

Q. A question came up here yesterday about the ownership of the materials which are processed by Carbide & Carbon, that is the uranium or raw material or whatever it is that comes into the plant. What is Carbide & Carbon's understanding about the ownership of the materials which it processes?

[fol. 294] A. Oh, definitely, they are Government-owned.

Q. Is that true throughout the processing procedure?

A. Yes.

Q. Such materials I believe are delivered to you by the United States Government and are not obtained from the manufacturer, not obtainable from any other source?

A. That's right.

Q. And the finished product, what do you do with it?

A. It is turned over to the Government.

Q. How many receiving points does Carbide & Carbon have?

A. We have three, one for each plant location.

Q. Is each of those a warehouse?

A. Each plant?

Q. I mean each of the receiving points, is it a warehouse?

A. No, our warehouses are actually separate from the receiving points but there are warehouses located at each of the three plants.

Q. The receiving points are buildings?

A. Yes.

Q. Are those buildings owned by the United States?

A. Yes.

Q. Are all of the plants throughout the area owned by the United States?

A. Yes.

Q. Are all of the office buildings and other structures you use and maintain at Oak Ridge owned by the United States?

[fol. 295] Yes.

Recross examination.

By Mr. Humphreys:

Q. Would you be able to say without violation of any Security Regulations whether this material that is furnished to you by the United States Government and upon which the processing is made by Carbide & Carbon, is fissionable material?

A. Would you state that question again?

Q. What I am asking you is, is such material that you spoke of on your direct examination as belonging to the United States Government and which is furnished to Carbide & Carbon for processing in these plants, fissionable material?

A. I believe I can answer that without violating the Security. It is.

And further deponent saith not.

Oral Rhinehart, by — — Court Reporter.

Sworn to before me 15 December, 1948. — —,

Notary Public. My commission expires — —

— —.

[fol. 296] The next witness, VERNON L. LOONEY, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, your age and address.

A. Vernon L. Looney, age 37, 101 Air Lane, Oak Ridge.

Q. What is your position?

A. Supply Officer.

Q. Who is your employer?

A. Atomic Energy Commission.

Q. What are your duties?

A. Liaison Officer for the Supply Division.

Q. Have you at any time held a position as Accountable Property Agent for the Atomic Energy Commission?

A. Yes.

Q. When did you terminate your position?

A. I believe those orders were sent in last month. I think they were dated November. I don't remember the exact date.

Q. I notice that your name appears on Stock Record Card filed as an exhibit in this case. Did your duties as Accountable Property Agent relate to Carbide & Carbon operations?

A. Yes.

Q. Did they relate to all three plants?

A. Yes.

[fol. 297] Q. Now, as Accountable Property Agent, what were your duties?

A. I was responsible from the Government's standpoint, I was the responsible agent for the Government properties in the custody of the contractor which was Carbide & Carbon and was responsible for maintaining or causing to be maintained accountability records of all properties received

at the various installations and the periodic review of the contractor's policy and appearance for the handling of the property, storing and issuing materials.

Q. A question was asked Mr. Rhinehart here relating to Supplemental Agreement No. 8, to the Carbide & Carbon contract which provides in substance that title to purchases shall vest in the United States Government at the point designated by the Contracting Officer in writing, provided that the right of final inspection and acceptance or rejection in writing is reserved to the Contracting Officer. Now, the question was asked Mr. Rhinehart as to whether the Government has ever in writing accepted purchases by Carbide & Carbon under its contract. Can you answer that question?

A. To my knowledge, I don't have any knowledge of any specific written acceptance that the Government has ever made for contractor purchases. The policy probably has been that the Government has assumed—

Mr. Humphreys: At this point, I am going to interpose [fol. 298] an objection to these rather violent assumptions that are contrary to the written contracts and unsupported by reference to any authority.

Q. Well, you have testified that never to your knowledge has there been a written acceptance by the Government of properties purchased by the contractor, Carbide & Carbon. When did you assume responsibility for properties purchased in the transaction of acquisition?

A. There is in writing a mutual agreement between the contractor and the Contracting Officer that the Property Accountability Records maintained by the contractor are being maintained by the contractor for the Government Accountability Officer and that they are the records of the Government. At such time as the contract is terminated, or that the contractor is relieved of his responsibilities, those records may become a part of the Government records and be turned over to the Government. The physical mechanics of maintaining the record was done by the contractor personally, but the records were maintained, or I might say that the contractor had agreed to maintain a record which was the record of the Accountable Property Agent. I think you will find—I cannot put my finger on that correspondence right now—that is the basic reason why the Accountable Property Agent's name appears on

the Stock Record and the basic reason that the records of the Atomic Energy Commission are stamped records of the [fol. 299] Atomic Energy Commission or the Clinton Engineer Works as the case may have been.

Mr. Humphreys: In order that the Complainants may be advised of the defendant's attitude with reference to this testimony, objection will be made at the present time that it is not the best evidence of the agreement referred to.

Q. Regardless of the letters or correspondence which you spoke of relating to possession and keeping, and later delivery over of records, let me ask you this: You have testified that it is a part of your responsibility as Accountable Property Agent for the Atomic Energy Commission, that it was your duty to keep check on property belonging to the Government in possession of Carbide & Carbon; is that right?

A. Yes.

Q. What were your instructions and what was your practice with respect to the time your responsibility started, say in a typical transaction of a purchase like here, a purchase of a bulldozer? When did your responsibility start?

A. We operated from an accountability standpoint; we operated under a specific Manual published by the Government and the provisions of that Manual provided that the Accountable Property Agent was responsible for review and supervision of the receiving policies to be sure that all materials and equipment purchased were properly received and record of receipt was made. On the basis of that, we [fol. 300] assumed that our responsibility began at the time of delivery at the plant. It was our responsibility to see that the proper record of receipt and Receiving Reports were prepared and that those Reports were prepared in sufficient detail that the equipment could be identified, and the equipment upon delivery, if it was an item—we had three different classifications of property: Class A, Class B and Class C property. Class A was real estate, lands and facilities. Class B property is property *is property* which has a continuing life expectancy. It is not consumable materials. Properties of that type were given a number, what we call a property identification number. That number in general had a preface on it, "US", and for the purpose of identifying it with a specific contract like Carbide & Carbon, "C&CCC", and then that piece of property from

that point on was identified by that particular property number.

Q. Did you regard yourself as being responsible for it under your duties as Accountable Property Agent from the time it was so identified?

A. Yes.

Q. What was Class C property?

A. Class C property is consumable materials and supplies of every nature of materials and supplies, which when put into use would be incorporated into other things and lose their own individual identity.

[fol. 301] Q. Did you regard it as a part of the responsibility of your duties to account for property of Class C character from the time of receipt?

A. Yes.

Q. Now, you have mentioned or used the phrase, "from the time of delivery at the plant." Do you mean by "delivery" the time of receipt of the goods from the supplier?

A. That's right.

Q. Under that description of your understanding of the responsibility of your office and of the practices, would there have been any point in the Government making a written acceptance of title to any property?

A. From a practical standpoint of accountability, no. We accepted title or assumed we accepted title at the time of delivery of the material, and probably a good point there might be at the time material or materials that were received in unserviceable condition were taken up in the property records and if those materials developed that they had to be returned to the vendor for adjustment they would be shipped out on a shipping order and that also was recorded in the property records.

Q. Do you mean they were treated as being goods within your responsibility?

A. That's right. They were considered to be items of Government property even though inferior or damaged; [fol. 302] they were subject to Government control. The contractor did not ship those items from the area without making proper notation in the property records and advising the Accountable Property Agent of the action taken.

Q. You referred a moment ago to a Manual of some kind.

A. Manual TM 14-910.

Mr. Fowler: That's the same Manual, General Humphreys, that you have a copy of.

Mr. Humphreys: Yes.

Q. I believe we asked Mr. Vanden Bulck to file a copy of certain portions of it, being paragraph—

A. In that Manual under the Sections with reference to Receiving and Inspection, there is a paragraph in the Manual which makes reference to the responsibility for Government inspection. Under the policy established a good long while ago, the representatives of the Government who participated, either on a selective check basis or on a 100 per cent basis were assigned to the Accounting Branches of the Government and at the time I took over Accountability in the Carbide & Carbon plants I questioned that particular provision in the Manual which in my opinion put certain responsibilities on myself as Accountable Property Agent, so I had my Field Representatives check on the contractor's receiving policies and make limited selective checks on their own basis and independent of the designated representatives of the Contracting Officer for the purpose of making a qualitative and quantitative [fol. 303] check. As I interpreted that Manual, there was a definite responsibility imposed on the Accountable Property Agent that he could not avoid.

Q. Those inspections that you refer to were made at the time of receipt of goods?

A. Yes.

Cross-examination.

By Mr. Humphreys:

Q. Mr. Looney, you say that you interpreted the Manual one way and there was another interpretation contrary to yours, placed on it by whom?

A. It was a difference of interpretation. It was reluctance on the part of the management to make a change in organizational structure.

Q. What management, Atomic Energy Commission?

A. That's right.

Q. What was that reluctance about, to do what?

A. They were reluctant to make a change in the organizational structure.

Q. What change?

A. Had they ever turned that responsibility over to me as Accountable Property Agent, as Technical Manual 14-910 indicates is normal policy, it would have involved assigning a group of some five individuals to my branch, and that group of four or five individuals perform the selective qualitative and quantitative check for the Government. At the same time, they had certain other duties and [fol. 304] responsibilities. The branch to which they were assigned was reluctant to release those people and attempt to redistribute the additional work allotted.

Q. So, as Accountable Property Agent, you did not have any inspectors inspecting as to quality and quantity check?

A. I did have, yes.

Q. Who were they?

A. Mr. Flanagan.

Q. I did not know. I thought you said that you wanted five and could not get them?

A. They did not turn this particular group as designated representative of the Contracting Officer over to me. They continued to function out of the Supply Section. But independent of that group, in order to fulfill my obligation, I set up some of the men assigned to my organization to make the check. It was a duplication of effort. I felt I had a certain responsibility that I could not avoid even though the responsibility was specifically assigned to another group.

Q. Now, on what basis do you state that you regarded yourself as accountable for this property, A, B and C?

A. Designated authority from the Contracting Officer, written designation.

Q. What responsibility did you have for the property, what was the nature of the responsibility that you had for it?

A. The Government policy has been for a good many years that all items of Government property have to be assigned to the responsibility of a designated individual who is an employee of the Government. That individual is [fol. 305] accountable and responsible for the proper custody and control of that property.

Q. Do you mean if a piece of that machinery breaks, you are responsible to account for it?

A. Not from a mechanical standpoint.

Q. From what standpoint?

A. Only from a physical control standpoint. Let me put it this way: If the item of property itself in the custody of the contractor becomes lost, or in the case of misappropriation of an item of property by contractor personnel or any personnel, it is the responsibility of the Accountable Property Agent to explain and justify and to gather the facts and data to support the dropping of that property from the Government records, or if it — necessary to prosecute, it is the responsibility of the Agent to request that legal proceedings be instituted.

Q. The truth about the situation is largely this: That your function is to hold the contractor accountable to deliver the property?

A. That's true.

Q. And you don't have possession of the property and have no control over it except to see that he has the property and turns it back at the end of the period of the contract for which he has contracted to have it: isn't that right?

A. That's basically correct.

[fol. 306] Q. So, when you say you are accountable for the property, what you mean is that you hold him accountable for it?

A. Contrary to normal commercial practices the Government —

Q. Just answer my question. You say you are just to hold him accountable for it?

A. That's correct. Let me add one point there that might clear in your mind—the term "accountable". In the event of misappropriation of property or loss of property in the custody of the contractor which could not be properly explained, the Accountable Property Agent is subject to prosecution for negligence of duty in the loss of Government property. Now, that may sound far-fetched, but it is a fact.

Q. Now, no custody of this property ever passed to you as the representative of the Atomic Energy Commission, did it? It remained in the contractor from the time it was delivered and remains in the contractor even now?

A. Custody is vested in the contractor.

Q. When you went out of office as the Accountable Property Agent, you had no records showing the property on hand in the hands of the contractor?

A. The records are still in the plant areas, the records of the property.

Q. I say, did you have any such records?

A. Do I have any personally? No.

Q. Did you have any when you went out of office showing the property and where it was and who had it?

[fol. 307] A. The records are still in the plants still being maintained there.

Q. What you mean is that the records of accountability are kept by the contractors themselves?

A. That's correct.

Q. You don't keep any such records?

A. No.

Q. When you went out of office you did not have to account to anybody for any property. You just went out of office; that's all?

A. The property responsibility or accountability was transferred from myself to another individual, a group of individuals.

Q. So, when it came time to muster you out, you didn't have to account for the presence at a certain place of so much property here or elsewhere because you never had any of the property or never had any of the records?

A. No.

[fol. 308] Redirect examination.

By Mr. Fowler:

Q. When you say the records were kept by the contractor, notwithstanding, is it your position that the records as thus kept spelled out and described the property for which you were responsible?

A. That's true.

Q. You did not do your own clerking?

A. I did not do my own clerical work. That work is done by the contractor.

Q. During what period were you Accountable Property Agent in relation to Carbide & Carbon?

A. The K-25 plant was May, 1946.

Q. Did you take over the other two plants when Carbide & Carbon took them over?

A. That's right. I believe it was in May. I will have to check that.

Q. We have the dates or they are in the record.

A. May, 1947 in Y-12 and I think March—

Q. Anyhow, you were Accountable Property Agent with relation to K-25 from when?

A. May, 1946.

Q. And you were Accountable Property Agent with respect to Y-12 from the time Carbide & Carbon took over operation and also with respect to X-10 from the time [fol. 309] Carbide & Carbon took over operation?

A. Yes.

Recross examination.

By Mr. Humphreys:

Q. On these cost-plus contracts, I take it that the practice and procedure is something like this, and that is the case here: This contractor is furnished so much money to operate with and he buys certain materials and supplies, tools, machinery and equipment and at the termination of his contract, he has to account to the Government Agency under whom he is employed for the money or for the tools and machinery or for their loss or destruction, and in order that you may keep a check on him, you function as the Accountable Property Agent to see that proper reports are made of such purchases and proper records are made so that the contractor can account at the end of the term of the contract for these things that have come into his possession in that fashion. Isn't that about the size of it?

A. The accounting is done progressively. It is not an accumulation of records that they will be able to account for and turnover at the termination of the contract.

Q. But that is the object, to see that at the end of the term that all of the money or materials and supplies are accounted for; is that right?

A. The object is to determine progressively that the contractor is maintaining proper records and control of [fol. 310] Government property in his custody. The records are progressively reviewed.

Q. All those records contemplate a final termination of the contract when the contractor will have to account?

A. That is the only purpose that the record will serve, is to assist in the final termination of the contract, but the record, and the major benefit derived from the record is a progressive accounting.

Q. What is the object of the progressive accounting if it is not what I have just asked you?

A. You imply that the record has no significance until contract termination. That is not it.

Q. What significance does it have?

A. They are required to submit monthly inventories, monthly reports of the status of material, equipment and supplies. They are subject to inspection by Government representatives at any time.

Q. What is the significance of that?

Mr. Fowler: You don't want to lock the door after the horse has been stolen.

The Witness: That's exactly it, or at any time that the contractor does not maintain or representatives of the Government consider proper and adequate records they can say they are.

Q. The whole thing is that when it comes time for him [fol. 311] to account he can account?

A. I disagree with you entirely on that.

Q. What is the purpose of it?

A. The purpose is to keep the Government and its representatives advised currently.

Q. So that if they want him to account he can account.

A. He accounts progressively, but it is absolutely a contract termination.

Q. And may cause a contract termination?

A. Yes.

Q. The whole thing is to enable him to account whenever it is determined he should account?

A. In my opinion he accounts progressively as he makes his entries on the records.

And further deponent saith not.

Vernon L. Looney, by — —, Court Reporter.

Sworn to before me 15 December, 1948. — —,

Notary Public. My commission expires: — —,

[fol. 312] Mr. Fowler: The Manual for Cost-Plus-A-Fixed-Fee Supply Contracts has been referred to only as TM 14-910.

Mr. Humphreys: That's right.

Mr. Fowler: The other one is referred to in general terms as the Administrative Audit Manual. I suggest that you

and I agree that either one of us can put in the record such excerpts as he desires.

Mr. Humphreys: I make that agreement.

Mr. Fowler: All right, that will serve without cluttering up the record.

The next witness, OREN W. BERNHEIM, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, address and occupation.

A. Oren W. Bernheim, age 46, my home address is 170 California Avenue. Assistant Purchasing Agent.

Q. For what Company are you Assistant Purchasing Agent?

A. Carbide & Carbon Chemicals Corporation.

Q. Is your place of work here at the Clinton Engineer Project?

A. Yes, at K-25 plant.

[fol. 313] Q. How long have you held the position of Assistant Purchasing Agent?

A. Three and one-half years.

Q. What are your duties?

A. I have direct supervision over all buying and assist the Purchasing Agent and take his place when he is out of town.

Q. Do your duties and responsibilities cover all three plants operated now by Carbide & Carbon?

A. Yes, they do.

Q. Have you held the same duties and responsibilities since you became Assistant Purchasing Agent some three years ago?

A. Yes.

Q. Mr. Bernheim, I am not going to ask you all of the questions I originally intended to because Mr. Rhinehart has already answered most of them and to have you testify on the same thing would simply be repetition. I will, however, ask you with respect to this label or stamp that is placed on Class B properties and perhaps on Class A property, I don't know, "USA-C&CCC". Do you know

when in the process of buying a piece of goods that label or stamp is attached?

A. Well, when we purchase property items, we immediately, before the order is typed, we immediately get from the Property Department a property number and that is put on our comparison of bids and on our Purchase Order, [fol. 314] "Property USA-C&CCC" and whatever number it is.

Q. When did that practice first start?

A. Ever since I have been with the firm.

Q. And in the case of purchases for Y-12 or X-10 you precede that legend with an "X"?

A. With a "Y".

Q. With a "Y" or "ORNL," meaning Oak Ridge National Laboratory?

A. Yes.

Q. Also another question relating to the purchase of coal. One of the cases here happens to be a case of the purchase of coal from the Diamond Coal Mining Company. It seems that in some or many instances, Carbide & Carbon has the practice of sending out an Inquiry Form to suppliers after there is a Purchase Requisition executed?

A. That's right.

Q. Do you send out Inquiry Forms in cases of proposed purchases of coal?

A. Oh, yes.

Q. Do you know whether or not such a form was sent out in connection with this Diamond Coal Mining Company purchase here that is covered in the case?

A. That is usually the practice. Whether it was done in this case or not I could not state without checking the record.

[fol. 315] Q. Do you remember as to which plant the coal of the Diamond Coal Mining Company was to be used?

A. K-25.

Q. If such an Inquiry Form was sent out to Diamond Coal Mining Company was it on the same form as Exhibit 4 and I hand you a copy of Exhibit 4?

A. Yes, it would have been because we have been using this form for four and a half years to my knowledge. I have been with the Corporation that long and they have used that form ever since I have been with the corporation.

Q. What additional matter would have appeared on that Inquiry directed to Diamond Coal Mining Company?

A. In here (indicating) we would state the type of coal we desired, and we would put the date that we would require the information back from them, and who to reply to and of course up in the top here it would be the Requisition number so we could tie into the proper Requisition, and whatever material required, when we want deliveries to start.

Q. With respect to inspection procedure Mr. Bernheim do you know whether or not the United States Government or the Atomic Energy Commission has ever made any inspections relative to the suitability of the goods or the passing of title to them aside from the initial inspection at the time of receipt of the goods?

A. Well, not to my knowledge.

[fol. 316] Q. So far as contacting a supplier of goods is concerned in a typical transaction does the contract consist only of the exchange of documents in the form in which they have been filed here, that is the Inquiry Form, the Purchase Order, the Invoice of the seller and the check to the seller, normally, is the contact limited to those documents?

A. It is.

Q. The reason I asked that is to find out whether the suppliers at any time inquire into the exact contractual rights between Carbide & Carbon and the Atomic Energy Commission under that contract?

A. Why, I think most of them understand what it is for and that is perhaps one of the reasons why we are able to get as good deliveries of things as we are able to get because they know the nature of the work being done here.

Q. They know it is urgent and important work?

A. Yes. In expediting we often express that fact too as the reason why we need materials.

Q. Have you ever had any inquiries from suppliers as to what the inspection or title passing provisions of the Carbide & Carbon contract are?

A. Not to my knowledge, we have not had any questions like that.

Q. The same procedure has been followed in cases of purchases for all three plants, I take it?

[fol. 317] A. Yes.

Q. Is there a usual f.o.b. point?

A. Well, as a rule in our inquiries we ask for it to be f.o.b. destination if it is possible, but some firms don't, that is not their usual practice and they will quote f.o.b. shipping.

point. The Purchase Order states there where the f.o.b. point will be.

Q. Is there any difference in procedure in cases of purchases made from suppliers outside of Tennessee from cases of purchases made from suppliers inside of Tennessee?

A. No, there is no difference.

Cross-examination.

By Mr. Humphreys:

Q. Mr. Bernheim, you did not intend to imply in the answer you made to the question on direct examination with regard to the time of inspection that there is any inspection made by anyone authorized by the United States Government to accept title to these goods and any execution of an instrument indicative of the acceptance of such title, did you?

A. I am not sure whether I quite follow what you mean there?

Q. Do you have any instrument that has been executed by anyone on behalf of the Atomic Energy Commission indicative of the acceptance by the Commission or the United States Government of title to any of these properties? If so, will you file that document as an exhibit to [fol. 318] your cross examination?

A. As far as our Department is concerned we do not have any. The only thing I have here is on certain classes of material that we buy, especially if it is over \$2,000.00, we always send it to the Atomic Energy Commission for their approval.

Q. That is a purchase that is in accordance with the contract?

A. Yes.

And further Deponent saith not.

Oren W. Bernheim, By — — —, Court Reporter.

Sworn to before me, 15 December, 1948. — — —.

Notary Public. My commission expires: — — —.

[fol. 319] The next witness,

W. P. PERRY, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age and address.

A. W. P. Perry, 44, 106 Poplar Road.

Q. What is your occupation?

A. Supervisor of Receiving and Shipping, Carbide & Carbon Chemical Corporation, K-25.

Q. How long have you had that position?

A. Four years and six months.

Q. What are your duties?

A. To receive and ship all materials into K-25 and out K-25.

Q. Do you normally have your place of work at the receiving point?

A. Yes.

Q. Do you have an office there?

A. In the same building.

Q. Are those duties restricted to K-25?

A. Yes.

Q. You don't have anything to do with X-10 and Y-12?

A. No.

Q. Can you state whether or not X-10 and Y-12 follow the [fol. 320] same receiving practices that you are going to describe?

A. Yes, they operate under the standard practice and procedure that is handled in K-25.

Q. Now, Mr. Perry, in your own words tell us the receiving procedure at K-25.

A. The material is received either by motor express or by carload shipments; is brought into the warehouse; the Purchase Order number is taken from the packages and they are segregated. The Purchase Order number is pulled in from the office and is then sent out to the receiving warehouse and the Receiving Clerk will then take the order and open the package and first, of course, visually check it for any possible damage to the package that might have occurred on shipment. Then he will open the packages and count, visually check it by serial number or any identifying

marks on whatever he may be checking that would tie it into the Purchase Order. If there is an exception, if the material that is received is not as ordered, he makes an exception, what we call an exception on delivery. It is then turned over to the Office Section, called to his supervisor's attention and he makes whatever the necessary exception is on delivery and marks it on the face of the Purchase Order. It is then passed to a typist who compiles a Receiving Report and will put the necessary information on the [fol. 321] Receiving Report as transportation information and the material received, whether or not this material is as it has been ordered or if it has an exception on delivery. Any exception on delivery is so noted on the face of the Receiving Report and there is at the bottom of the Receiving Report a notation, "Exception on Delivery." If it is not an acceptable substitute, or if it is the wrong material shipped in the body of the Receiving Report, no information except "See Exception on Delivery" is put in the body of the Receiving Report and the information sets forth what the exception is, that the material is the wrong material ordered and is to be returned to the vendor, and then the material is held in the Receiving Department until such time as we have the necessary information to send back to the vendor. Any material excepted is then delivered to the Stores Department with the Receiving Report and the person receiving the material signs for it and the Receiving Report is then brought back to our office and distribution made of it.

Q. Now, this person who opens the container and checks the contents against the Purchase Order or whatever papers he has, is he employed by Carbide & Carbon?

A. Yes.

Q. Has the Atomic Energy Commission has an inspector or checker there also?

A. They have had.

[fol. 322] During what period?

A. Well, for the first, well up until September of this year.

Q. What did that man do until his services were terminated?

A. He spot checked the material after we checked it to see if it was all right and he made a tally on it the same as

we would make a Receiving Report. Of course, he made his check as he was directed to do.

Q. At any stage in the process, was a label or stamp attached to the goods?

A. On property and material a tag is applied, or numbers and if it is the type of material that cannot be bradded onto the machine, a label is applied onto it and then shellacked so the label won't come off, or etched on with an etching machine.

Q. At what step in the receiving procedure is that done?

A. The minute or as soon as the Receiving Clerk sees that it is a piece of property item which the Purchase Order will indicate, he will then call the Property Clerk who is responsible for applying tags to merchandise, and he at the same time, while the package is opened, the Property Clerk will apply the property number to the package.

Q. Is that done even before preparation of the Receiving [fol. 323] Report?

A. Yes.

Q. Is it done as a routine part of the inspection upon opening of a parcel if the goods are found acceptable?

A. Yes.

Q. And if they are the kind that can be thus labeled?

Q. Yes.

Q. Has Carbide & Carbon adopted the practice of a tally-in-sheet like Roane-Anderson Company did?

A. We had it up until about a year ago and it was discontinued.

Q. The next paper that is prepared then under your current procedure after the receipt of goods, is the Receiving Report?

A. Yes.

Q. Are all Receiving Reports or were they, rather, up until the time the AEC inspector was taken off, were they signed by the AEC inspector?

A. Yes.

Q. Even though he only spot checked?

A. Yes.

Q. Now, on the Receiving Report filed in the first Carbide & Carbon case for the purpose of illustration, I will ask you whose signature is the last one appearing on the sheet?

A. W. M. Chester.

[fol. 324] Q. Was he the Atomic Energy Commission's representative?

A. Yes.

Q. Whose is the other signature?

A. Mine.

Q. Did you sign all such Receiving Reports?

A. Yes, except I do have an assistant who can sign in my absence.

Q. Since the Atomic Energy representative was taken off of this inspection, does the Commission rely solely upon the inspection by the contractor?

A. Yes.

Q. You have referred to the label. What actually appears on the label?

A. The first part of it is "USA-Carbide & Carbon Chemical Corporation or rather four C's, and then the number assigned. In other words, if it is No. 4682, that number would follow the four C's.

Q. Is the receiving point owned by the United States Government?

A. Yes.

Q. I believe after the materials are received and if acceptable, thus labeled, you said that you put them in a Government warehouse?

A. Yes.

[fol. 325] Q. But if they are unacceptable property, are they also warehoused then?

A. Yes, they are held in our same building, which would be a Government warehouse, until such time as we have instructions from the Purchasing Department to return to the vendor.

Q. How many receiving points does each of the three plants have?

A. One apiece.

Q. Do you know whether or not the Atomic Energy Commission makes any inspections later on after receipt of the goods or is that beyond your jurisdiction?

A. That's beyond my jurisdiction.

Q. The practices that you have described have they been in effect since you first held your position?

A. Yes.

Q. So far as you know, they will continue to be followed?

A. Yes.

Q. Except in respect to the Atomic Energy Commission ceasing inspection?

A. Yes.

Q. And the same procedure has been employed with respect to goods coming from outside of Tennessee as well as goods coming from within Tennessee?

A. That's correct.

[fol. 326] Cross-examination.

By Mr. Humphreys:

Q. You say that those goods after you have gone through the receiving procedure are placed in a Government warehouse. You adopted the language of counsel for the Commission in answering that question. You used the words "Government warehouse". Actually, that's the warehouse in the custody of Carbide & Carbon and has been for some time, isn't that true?

A. Yes, it is in the custody of Carbide & Carbon.

Q. And you all occupy it and you just put the material that you buy in the warehouse when you buy it?

A. Yes.

Q. That's right, isn't it?

A. Yes.

Q. What you mean to say, I take it, is that so far as you are advised—and that is merely on hearsay—that the title to that land is in the Government?

A. That's correct.

Q. Of course, you don't know even that as far as having examined any title papers?

A. No.

Q. You just heard that?

A. Yes.

And further deponent saith not.

By ———, Court Reporter.

Sworn to before me 15 December, 1948, ———,
Notary Public. My commission expires: ———.

[fol. 327] The next witness, G. M. FLANAGAN, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your name, age and address, Mr. Flanagan.

A. G. M. Flanagan, 57 years old, Efficiency A-3.

Q. That's your office address?

A. No, that's my home address. The office address is up here.

Q. What is your present occupation?

A. Well, it is more or less Liaison Officer between Carbide & Carbon and AEC.

Q. Between what?

A. Between K-25 and AEC.

Q. How long have you held your present position?

A. September.

Q. 1948.

A. Yes.

Q. What was your position before that?

A. Before that time, I was in charge of receiving in K-25 and Y-12, receiving for AEC.

Q. How long have you held that position?

A. I went in that in April, 1946.

Q. You held it until about September, 1948?

[fol. 328] A. Yes.

Q. During all of this time from April, 1946 have you been in the employ of the Atomic Energy Commission?

A. Yes.

Q. Was that true during 1946 or were you an employee of the Manhattan District then?

A. In 1946, I was an employee of the Manhattan District.

Q. What were your duties while you were in charge of receiving at K-25?

A. I had the duties to perform that every shipment that came in I had men down there that did the actual checking, that is the checking of the receiving of all shipments and if we did not have but one he spot checked, supposed to be one-tenth of the material received.

Q. Was that spot checking conducted in accordance with the requirements of a Manual of some kind?

A. Yes.

Q. What Manual was that?

A. That's a Manual put out for this particular section by the old Manhattan District.

Q. I notice on the Receiving Report of Carbide & Carbon over the signature space provided for the AEC representative it says: "Approved in accordance with the requirements of the Administrative Audit Manual."

A. Yes.

[fol. 329] Q. Is that the Manual to which you referred?

A. Yes.

Q. That Manual provided for spot and selective checks?

A. Yes.

Q. How many men did you have under you to do the inspection?

A. At one time there were four.

Q. Did they all work at one plant?

A. No, two at K-25, one at Y-12 and one at X-10.

Q. Do you know how many checkers would be at each of the places in the employ of the contractor?

A. Approximately.

Q. How many?

A. At K-25 was about twelve and at X-10 about six and four at Y-12.

Q. What was the duty of each of the Atomic Energy Commission's checkers? I assume that the Atomic Energy Commission had a checker at each of the three plants?

A. Yes.

Q. What was the duty of the checker?

A. A shipment would come in and he would stay with the company checker and actually count and see that the material was all there and as to quality and quantity and also as to conditions, and any discrepancies he noted on his tally sheet, called a tally-in, which is an itemized statement of the material.

[fol. 330] Q. But that was done only on approximately ten per cent?

A. Yes.

Q. Would the checkers actually open and inspect the goods as they arrived?

A. Yes, that is the shipment was not touched until they themselves opened it.

Q. Were the goods labeled or branded in any way upon arrival?

A. Not until after they are received.

Q. Do you mean after the actual inspection of them?

A. Yes.

Q. How soon after the actual inspection would they proceed to attach the label?

A. That depended entirely upon—that was always done before it left the receiving warehouse. Sometimes a man would number it. Other times it may be a day or two days later.

Q. That was the label that would bear the letters USA-C&CCC?

A. Yes, and then with the property number following.

Q. After receiving that order where would the goods be taken?

A. Then to the Store Section in which they were supposed to be handled from direct delivery. They might send [fol. 331] the Receiving Report to the Store Section, they have to send a man and check the material as being sent to whoever might have ordered it. Otherwise, it was picked up and sent to the Store Section that was handling it.

Q. Is the Atomic Energy Commission having a spot check made at points of receipt of goods?

A. No, they stopped it.

Q. Do they rely upon the contractor's checkers for that inspection?

A. Entirely.

Q. Has the Atomic Energy Commission at any time made any inspection beyond that which you have described as being made at the time of receipt of goods?

A. Not as far as I know. I did not come into that feature of it, but I do know that they did make periodical inspections over the plant.

Q. That's over the warehouse where goods are stored?

A. Yes.

Q. Do you know what the purpose was?

A. That was the Property Accountability function and I did not get in on that.

Q. Was Mr. Looney Accountable Property Agent at that time?

A. Yes.

Q. That was the function of his office to make the inspection?

[fol. 332] A. Yes.

Q. This practice as to receipt and inspection of goods which you have described has been in effect ever since the Tennessee Sales Tax Act went into effect on June 1st, 1947?

A. That's true.

Q. And so far as you know, the current practice as you have described it will be carried on indefinitely?

A. As far as I know.

Q. There was no difference in the procedure as to goods originating outside of Tennessee from those originating within Tennessee?

A. No.

Cross-examination.

By Mr. Humphreys:

Q. As I understand it, Mr. Looney isn't any longer the Property Accountability Agent? And, in fact, is there any Property Accountability Agent now?

A. It is my understanding not.

Q. There isn't any?

A. Not so far as the Atomic Energy Commission is concerned.

Q. That office and all of that force has been done away with?

A. Yes.

[fol. 333] Q. That's been true for how long?

A. That was about approximately sixty days ago.

Redirect examination.

By Mr. Fowler:

Q. Was that done in order to stop a duplication of function?

A. That's true. The responsibility was shifted to the contractor without going through the duplication of records and so forth.

And Further Deponent Saith Not.

G. M. Flanagan, By — — —, Court Reporter.

Sworn to before me 15 December 1948. — — —,
Notary Public. My Commission expires — — —,

[fol. 334] The taking of proof on behalf of the complainants in the above styled causes was resumed at Oak Ridge, Tennessee, on April 4, 1949 at 10 o'clock, a.m., and continued by the taking of the depositions of Louis M. Groeniger, R. J. Rochstroh, Samuel R. Sapirie.

These further depositions are taken under the same agreement as stated at the time of the taking of the first depositions beginning December 13, 1948.

Solicitor for the defendant waives the disqualification of A. C. Dore, Court Reporter to swear the witnesses, sign their names hereto and in all respects serve as if a Notary Public for Anderson County, Tennessee.

LOUIS M. GROENIGER, being first duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. State your full name, age and address.

A. Louis M. Groeniger, 118 Meadow Road, Oak Ridge, Tennessee; 37.

Q. What is your occupation?

A. Chief of the Industrial Personnel Branch of the Oak Ridge operations, Office Division of Organization and Personnel.

[fol. 335] Q. Is that a part of the work of the Atomic Energy Commission?

A. Yes.

Q. You are an employee of the Atomic Energy Commission?

A. Yes.

Q. How long have you held that position stated?

A. Since March 22nd, 1948.

Q. What are the duties of that position?

A. To supervise the work done in a section known as Wage and Salary Administration Section which explores and either approves or disapproved contractors' policies for reimbursement of moneys expended on employees. I mean specifically that any expenditure of the contractor which has to do with salaries or wages and any other conditions of employment that affect the employees are part

of the purview of this Wage and Salary Administration. Other duties as Chief of the Industrial Personnel Branch has to do with advising the manager of the Oak Ridge operations through my immediate Chief, Mr. Jack Curtis, on matters pertaining to labor relations. Another duty is supervision of a Personnel Statistics Branch which is concerned not only with wages and salaries and the statistical side of employment at Oak Ridge but has to do with such [fol. 336] things as cost of living. Those three sections come under my branch; wages, labor relations and personnel statistics.

Q. What position did you hold immediately prior to March, 1948?

A. From May 5th, 1947 until March, 1948 I was chief of a section which included the wage and salary administration and the labor relations. The only difference is, I did not have this personnel statistics function.

Q. Prior to May 5th, 1947 what was your occupation?

A. From January 1st, 1946 until May 5th, 1947 I was employed as a Civil Examiner by the National Labor Relations Board working out of the Tenth Regional Office situated in Atlanta. I had a territory which was comprised of East Tennessee.

Q. Where were your headquarters?

A. My official headquarters were in Atlanta. I spent upwards of twenty days a month in East Tennessee, ranging from Bristol and Kingsport down as far as Oak Ridge.

Q. How much time would you spend on duties relating to Oak Ridge?

A. Well, from about July, 1946 forward, I spent about 50 per cent of my time at Oak Ridge. As a matter of fact, in February 1946 while I was still employed by the N.L.R.B., I was assigned a house here at Oak Ridge and moved my family here.

Q. You were not an employee of the Manhattan Engineering District at the time of the execution of the con-[fol. 337] tracts filed as exhibits in this case, entered into with Roane-Anderson Company and Carbide & Carbon Chemical Corporation?

A. No.

Q. I believe that the Atomic Energy Commission assumed jurisdiction over Oak Ridge January 1st, 1947?

A. That's right; at least that's my understanding.

Q. And you were not employed by the Atomic Energy Commission until May 5th, 1947?

A. That's right.

Q. From your actions in discharge of your official duties have you ascertained whether or not the Atomic Energy Commission when it assumed jurisdiction over Oak Ridge, undertook to draw together into one formal statement various provisions that had theretofore been published regulations of labor relations between employees and the contractors?

A. Yes. Under the Manhattan District, the basic contracts such as are exhibits in this matter contain general clauses stating that the contractor would be reimbursed for moneys expended on employment and everything incident thereto so long as the expenditure was covered by the specific approval of some officer of the Manhattan District. That officer was referred to as the Contracting Officer. During the three or four years of operation the authorizations for reimbursement were in various forms. Some of these forms would be actual reimbursement authorizations based on the decisions of the Wage and Salary Administration [fol. 338] Agency of the Government. I believe the correct title was Wage Administration Agency. It might have been Salary Stabilization Agency. Some of the authorizations would be in the form of memoranda of clarification for the contractor from the Contracting Officer or possibly the memoranda would be from some higher-up in the Manhattan District than a Contracting Officer. In any event the Atomic Energy Commission must have recognized that after several years of accumulation of all these various forms of authorization, there was need for a regularized system, and as of January 1st, 1947 each contract then in existence was examined carefully by employees of the Wage Administration Section and a document such as introduced in this evidence, Reimbursement Order No. 1 for Roane-Anderson Company and Carbide & Carbon was the result. This is Reimbursement Order No. 1.

Q. In order to be more specific, I hand you now a mimeographed document styled, "United States Atomic Energy Commission Reimbursement Order", consisting of 23 pages with six attachments thereto bearing on the 21st page of the Reimbursement Order the signature of Jack Curtis and ask you if this is the Reimbursement Order to which you

refer in the case of Carbide & Carbon Chemical Corporation?

A. Yes, in the upper right-hand corner I notice this No. 1.

Q. I next hand you a document similarly styled except that it relates to Roane-Anderson Company rather than Carbide & Carbon Chemical Corporation and which consists of 32 pages and bearing on the last page the signature of [fol. 339] Jack Curtis and ask you if this is the Reimbursement Order in the Roane-Anderson Company case?

A. Yes.

Q. Are those correct copies of the Reimbursement Orders with those contractors?

A. Yes.

Q. I will ask you to file in the Roane-Anderson cases the Reimbursement Order affecting the Roane-Anderson Company as Exhibit No. 27.

A. Yes, I so file it.

Q. I ask you to file that Reimbursement Order affecting Carbide & Carbon Chemical Corporation as Exhibit No. 19 in the Carbide & Carbon cases?

A. Yes.

Q. For the convenience of counsel and the Court, would you summarize the general subject matter and indicate the extent of detail of these Reimbursement Orders without going to the extreme of a detailed statement?

A. The Disbursement Orders cover such matters as the salaries or wages paid by the contractors to the employees engaged in the work specified in these contracts. The Reimbursement Orders define the limits by which an employee may receive pay increases. They control the payment for overtime in some cases, the Reimbursement Order will control the amount of overtime which may be worked and, in any event, they always control the amount of compensation the employee will receive for overtime work. [fol. 340] They spell out how much vacation pay the employees may receive. They set forth which holidays the employees may be paid for not working. They define how much absent time an employee may be paid for, including absences because of sickness or in some rare cases for personal reasons. They cover reimbursement for subsistence and travel expenses for moving, expense to employees who are brought to the project for the convenience of the Gov-

ernment. In some cases, they provide for the return expenses. When an employee has completed his job he is sometimes entitled to reimbursement for moving himself and family and household goods back to the point of origin. The Reimbursement Order also controls the expenditure the contractor may make on health and accident insurance, retirement plan, recreation provided for employees, termination pay, and while it is not in either of these two, occasionally on a construction contract there will be spelled out what the craftsman may receive in the way of travel pay.

Q. If in some instance the contractor should fail to comply with this Reimbursement Order how is the contractor penalized?

A. Well, let's take a concrete example on that. In the Carbide & Carbon Reimbursement Order in attachment No. 3, page 3 of 4, the first classification listed there is a maintenance craft supervisor. It provides that the monthly salary for that man can be anywhere from \$395.00 to \$485.00 per [fol. 341] month. If the contractor wished to pay a certain craft supervisor more than \$485.00, and we did not approve it, he could either pay it out of his own pocket or just pay this maximum, which we would approve the maximum of \$485.00.

Q. In other words, departure from the limits of the Reimbursement Order is at the cost of the contractor himself?

A. That's right. Another more general example would be if he negotiated a contract with a labor union providing for ten cents an-hour wage increase and when he presented that to us we said that there was no justification for the ten cents and that five cents was all he should have negotiated for, he would have had the alternative of going back to the labor union and telling them that five cents was all that he would give them or by paying the additional five cents out of his own pocket.

Q. The Reimbursement Order in both cases, that is, Roane-Anderson Company and Carbide & Carbon both were prepared under the specific authorization of certain provisions of the contract entered into by the Atomic Energy Commission with those contractors?

A. That's right. That is the general clause I referred to earlier in each definitive document.

Q. Has it been found necessary from time to time to make changes in the Reimbursement Orders?

A. Yes.

Q. About how many such changes have been made?

[fol. 342] A. I think there are a little more than fifty supplementary Reimbursement Orders in the Carbide & Carbon contract and a few less than fifty in the Roane-Anderson contract.

Q. Have those changes affected the general structure and scope of the original Reimbursement Order filed as an exhibit here?

A. No.

Q. Of what then is the nature of the changes?

A. Well, in the Roane-Anderson Company pay structure for its maintenance employees was there effected by a union negotiation which was concluded shortly after the first of the year, 1947. This document R. O. 1 provided that a plumber as of January 1st 1947 could be reimbursed for \$1.44 an hour. If memory does not fail me, in late January, 1947 Roane-Anderson Company and the Knoxville Building Trades Council reach an agreement which provided that that plumber should receive \$1.54 per hour. Most of the rates shown on pages 29, 30, 31 and 32 of R. O. 1 in the case of Roane-Anderson were effected by that negotiation, so we see it when the contractor presented a request for change, in Reimbursement Order I believe No. 3-2 or 3-revising the rate. From time to time there have been other revisions, but there has been no revision in the policy, procedure and methods of handling this.

Q. There has never been any abdication by the Atomic Energy Commission of the power to impose these rates upon the contractor?

[fol. 343] A. No, there is a modification of the Roane-Anderson Company contract which I might quote to demonstrate that. The Roane-Anderson Company contract was modified by Modification No. 14 on the 27th of June, 1947 and this modification became effective July 1st, 1947. Article XXX of that modification says in part:

"Any amount paid or allowance made by the contractor to any employee in excess of regulations governing the hours of work and pay, job classifications and employee policy so approved or ratified by the Contracting Officer shall be at the expense of the con-

tractor under any pay reimbursement by the Government unless and until the Contracting Officer has so approved and ratified in writing."

In the same Article XXX of the modification there is further demonstration, which I don't believe it is necessary to quote:

Q. The contract at one point authorizes the Atomic Energy Commission to direct the contractor to discharge and pay employees that the Commission decides ought to be fired. Has the Atomic Energy Commission ever exercised that power?

A. Yes.

Q. In more than one instance?

[fol. 344] A. I know of only two cases. I think there has been more persons released by the contractor at the Commission's indication rather than order but I know of two instances where it was ordered.

Q. In other words, there has been actual instances of the exercise of that power by the Commission?

A. Yes.

Q. Mr. Groeniger, with respect to the higher salaried employees of the contractor, whom we may refer to as key personnel, does the Atomic Energy Commission have and exercise power with respect to the amounts of their salary and otherwise?

A. Yes, not only the amount of the salaries, but the Commission has the authority to exercise judgment as to whether or not the employee is qualified. Now, that is stated differently in different contracts, and, for example, I think in the Carbide & Carbon document it says the Commission must have prior review of the qualifications and it names such qualifications of key personnel.

Q. And furthermore, says their principal assistants?

A. In the matter of salaries, no contractor can hire anyone in excess of \$8,000.00 per year without Commission approval.

Q. Can we indicate what basic factors made it necessary for the Atomic Energy Commission to retain this particular control over the employment and work and the compensation of personnel of a contractor?

A. The Atomic Energy Commission is an arm of the Executive Branch of the Federal Government and it does

[fol. 345] not have the authority to delegate its responsibility for the expenditure of the taxpayer's dollar.

Q. So it has to be careful in these cost-plus situations?

A. Yes.

Q. Is there also some elements of maintenance of secrecy and to employ only reliable personnel at this particular place here?

A. Oh, yes.

Q. Have you regarded that as perhaps one of the important reasons contributing to this personnel policy?

A. No. My answer is along a fiscal and financial line rather than the security of information and the desirability of the employee as a loyal American. My answer is based on the responsibility to the taxpayer through the Congress. I don't know of anything in the Atomic Energy Act or any other Act of Congress which could permit a government agency to tell a contractor to pay whatever wages it likes to meet different kinds of situations and that it will reimburse him later for it.

Cross-examination.

By Mr. Humphreys:

Q. It is customary as I understand it in a cost-plus-a-fixed-fee contract to fix limits of maximum liability of the employing government agency for the employment policies of the contractor. That's true, isn't it?

[fol. 346] A. To the best of my knowledge.

Q. What you are testifying in regard to here is in substance that representing the government agency you have established through these documents that you have filed the maximum limits of Government liability for employment policies of the contractors, and these represent the maximum limits except as they have been modified by modification orders referred to; is that true?

A. That is true. That suggests this to me: I believe there is a provision in the contract—I know there is—that if the contractor said, "Well, we can afford to pay more than this and we are going to do it", and the contractor consistently persisted in that we could cancel the contract.

Q. But after all his employment, subject to the extent that it is necessary to maintain a personnel that is not sub-

versive and is loyal, his employment policies are under his own control except as regards maximum limits of liability which are fixed in these orders.

A. As far as reimbursability, it is, yes.

Q. And that is what you are testifying in regard to?

A. Yes.

Redirect examination.

By Mr. Fowler:

Q. Did the contents of these reimbursement Orders originate with the contractors or with the Atomic Energy Commission [fol. 347] mission or before that with the Manhattan District?

A. Both.

Q. Will you explain?

A. Yes. It is the Commission's policy, internal policy, that insofar as a contractor has home office policies which he has utilized in his private operations, we will approve those unless and until they upset something at Oak Ridge. For example, as I understand this history of employment policies at Oak Ridge, certain Carbide & Carbon policies that they had practiced in private operations would probably not have been feasible here. The Manhattan District, therefore—I don't know whether they expressly disapproved or tacitly disapproved those policies—maybe Carbide & Carbon never requested that they be put into effect. Other policies would just have no application.

Q. To the extent that the Atomic Energy Commission found and finds contractor policies unobjectionable, the Commission adopts them as its own and embodies them in Reimbursement Orders?

A. Yes, except that that is not known as the Atomic Energy Commission's own policies. It is policies which the contractor is allowed to use in the exercise of the particular contract. But it does not become the policy of the Atomic Energy Commission. If I might add this, I might have gone a step further in replying to your question about maximum liability. In certain phases, for example, on a construction contract, by law there is a minimum which the contractor must follow. That is provided for in the Davis-Bacon Act.

[fol. 348] Mr. Humphreys: That is an Act of Congress?

The Witness: Yes.

Q. By saying that the Commission adopted these policies as its own are simply meant that where unobjectionable, the Commission would put in effect by its Disbursement Order the policies suggested by the contractor?

A. That's right.

Recross-examination.

By Mr. Humphreys:

Q. Actually, the sum and substance of the whole matter is that you reimburse the contractor for his expenditures under these policies which you permit him to adopt. That's the sum and substance of the matter?

A. Yes.

Q. That gets it down to the point?

A. Yes.

Q. You reimburse him to the maximum limit you have indicated?

A. Yes.

Q. But he adopts the policies and you reimburse him unless you disapprove the policy as calling for the expenditure of more money than you feel he should be authorized to expend. That, in substance, without being specific, would be correct?

A. Except that I would like to retain that one point, that he may have a policy which he wants. As a matter of fact, I [fol. 349] have written two letters last week refusing to approve policies which he has contended and demonstrated our policies he practices elsewhere.

Q. But they don't fit in here and so they are not allowed?

A. That's right.

And further deponent saith not.

Louis M. Groeniger. By — — —, Court Reporter.

Sworn to before me this April 4, 1949. — — —

Notary Public. My Commission expires: 4/14/52.

The next witness, SAMUEL R. SAPIRIE, being first duly sworn, deposed as follows on:

Direct examination.

By Mr. Fowler:

Q. State your name, age and address.

A. Age 39, 100 Ogden Circle, Oak Ridge.

[fol. 350] Q. What is your occupation?

A. I am an engineer with the Atomic Energy Commission.

Q. What position do you hold with the Atomic Energy Commission?

A. I am Director of Production and Engineering for Oak Ridge Operations.

Q. How long have you held that position?

A. I have held that position since February 1st, 1947.

Q. What are the duties of that position?

A. I am responsible for developing, recommending and directing procurements for production and process improvement of the electro-magnetic and gaseous diffusion separation plants, engineering and construction related to production and research procurements, and accountability of source and fissionable materials, developing and currently maintaining plans for mobilization, supplying natural gas and electric power, communications service, off-area facilities not otherwise assigned, and for providing staff assistants on similar matters pertaining to the Dayton Area.

Q. Mr. Sapirie, first I want to ask you about who buys and pays for the services of the utilities to the contractors?

A. I might list those individually. The electric power service is purchased by the Atomic Energy Commission under a prime contract between the Commission and the Tennessee Valley Authority. The Telephone services are purchased by the Commission under a prime contract with Southern Bell Telephone & Telegraph Company. The water is supplied with the use of Government-owned facilities that have been constructed on the area and are now [fol. 351] operated by various contractors under cost-plus-a-fixed-fee type contract. The Roane-Anderson Company operates the main water system which supplies the City of Oak Ridge, and Electro-Magnetic Plant and the Oak Ridge National Laboratory. The Carbide & Carbon Company

poration operates the water system that supplies the gaseous diffusion plant. The Roane-Anderson Company also operates the two sewage systems that provide for sewage disposal for the town of Oak Ridge. The Carbide & Carbon Chemical Corporation operates the sewage disposal plant at the three plants.

Q. Has the Atomic Energy Commission entered into a contract looking to the supplying of natural gas to one or more of the plants at Oak Ridge?

A. Yes, the Atomic Energy Commission has entered into a prime government contract with the East Tennessee Natural Gas Company for the supplying of natural gas to serve the production plants and possibly the City of Oak Ridge. The Gas Company is at present applying for a Certificate of Convenience and Necessity from the Federal Power Commission, after which they will initiate construction of the pipeline from a point on the T.G.T. line near Smithville, Tennessee to Oak Ridge with use of steel pipe that is being made available under the steel industries' voluntary allocation plan. The gas will then be supplied to the Oak Ridge area for the use of the three plants and possibly the City.

[fol. 352] Q. Leaving the general subject of the services furnished by Utilities, in the case of some supplies used by these contractors, does the Government through the Atomic Energy Commission buy them itself and turn them over to the contractors?

A. There are some supplies such as nitrogen, helium and certain coded chemicals that are purchased by the Government under Government purchase orders for delivery to the plants for use in the plant operation.

Q. How about automotive equipment?

A. Automotive equipment and office equipment is purchased by the Government for use by the operating contractor.

Q. Is the distribution of steel still subject to some allocation by somebody?

A. The Steel Industries Committee is cooperating with certain government agencies under a voluntary steel allocation system whereby they make certain quotas of steel available for use during different quarters of the year. The Atomic Energy Commission is participating in the volu-

used by the various operating contractors for construction and operation under cost-plus-a-fixed-fee type contracts.

Q. Now, Mr. Sapirie, going to the subject of source and fissionable material, which was referred to in the Atomic Energy Act, I want to ask you to tell us or describe to us the extent of supervision by the Atomic Energy Commission over the contractors who deal with those materials?

[fol. 353] A: Well, in the first place, I might say that title to the source and fissionable materials remains with the Atomic Energy Commission. The materials are made available to the various contractors by the Commission and are carefully accounted for and controlled with use of a system of receipts, inventory and survey. The Commission uses complicated statistical analysis method to analyze the discrepancies in order to ensure against diversion of the source and fissionable material. The analyses and protective measures used by the contractors are under surveillance of Commission representatives periodically and surveys of the security and accountability procedures employed by the contractors are made in accordance with well-defined Commission policy.

Q. I hand you a bulletin apparently published by the Atomic Energy Commission and ask you to tell me what that is?

A. This is bulletin G. M. 95 and summarizes the Atomic Energy Commission's policy that is followed in the accounting for source and fissionable material. Its policy is defined in Washington, is transmitted to the five field offices of operation, of which Oak Ridge is one, where it is then disseminated to the field offices under Oak Ridge, with implementation in an Oak Ridge bulletin No. 96.

Q. Will you file Bulletin G. M. 95 as Exhibit No. 20 in the Carbide & Carbon Chemical Corporation cases and also [fol. 354] file Bulletin O. R. 96 as Exhibit No. 21 in the Carbide & Carbon cases?

A. Yes, I so file them.

Mr. Fowler: I state now that these bulletins are not filed in the Roane-Anderson Company cases because Roane-Anderson does not have a direct relation to the handling of source and fissionable materials.

Q. Had you completed your statement with respect to these two exhibits?

A. I might add, briefly, that G. M. 95 contains a copy of the shipping document that is used in transferring source and fissionable material between contractors and the Atomic Energy Commission's offices.

Q. What page is that on?

A. That is Exhibit 2 at the back of the Bulletin.

Q. Next to the last page?

A. Next to the last page. In the back of that form it illustrates the routing of the various copies of the S.F. shipping form. You will note that each form has copies that go to each Atomic Energy Commission office involved in the shipment, both the shipper and the receiver, and regardless of what action is taken by the contractor in shipping source and fissionable material you will find that the action of shipment is directed by the Atomic Energy Commission and then the completed shipping forms are filed in the Atomic Energy Commission offices that have responsibility for the shipment, and the Atomic Energy Commission has responsibility for receiving.

Q. When you speak of S.F. material, you are referring to source and fissionable material?

A. That is right. Source material is material that contains normal uranium. Fissionable material is enhanced in the uranium 235 isotope or plutonium.

Q. Does the Atomic Energy Commission exercise any supervision during the processing of these materials?

A. Yes, the actual operations are carried on by the cost-plus-fixed-fee operating contractors. However, they carry on the operations in accordance with specific policies and schedules and specifications established by the Commission, and in accordance with budgets that are approved by the Commission with use of funds allocated and authorized by Congress. The Atomic Energy Commission operations offices has a production division under my office that is a plant operating group, that extends the charges, approving their time, inspecting the work being done by the operating contractor and checking and analyzing all operating reports prepared by such contractor.

Cross-examination.

By Mr. Humphreys:

Q. After the purchase of the utilities services, electricity and water, by the Atomic Energy Commission on prime

contracts, on what basis are these utilities furnished to the prime contractors, who are operating the plant here?

[fol. 356] A. They are furnished to the plant operators under an arrangement whereby the Electric Power branch under the Engineering Division takes the responsibility for checking and billing from Tennessee Valley Authority and the allocation of the use of power under such billing to the various operations for cost purposes. However, there is no exchange of funds between the various contractors and the Commission for the power so furnished. We have a telemetering system that summarizes the total usage in the area, which is the basis for a single bill that is presented by Tennessee Valley Authority to the Commission and paid by a single check. The budgeting for the Tennessee Valley Authority account is handled under my offices and the operating contractors have no participation in the actual funding of the power bill. They are advised, however, of the value of the power furnished to them so that their records of the cost of production or the cost of operating the town are realistic and include all values.

Q. As a matter of fact, there has been and there is but one major source of electric energy in this whole area, and that is the Tennessee Valley Authority?

A. With one exception. We have at K-25 a generating station of our own that produces a particular type of power for our operations.

Q. Who operates that?

A. That is operated by Carbide & Carbon Chemical Corporation in accordance with operating procedures that have been developed and approved by the Commission on an entirely reimbursable basis.

Q. I believe that is a very large plant and it has an enormous capacity for the creation of electric energy?

A. This plant has an installed capacity of approximately 235,000 K.W. but it is usually operated at approximately two-thirds of that capacity.

Q. Now, you spoke of direct purchases by the Government of coded chemicals and steel?

A. I did not mention steel. I included nitrogen, helium and certain other products.

Q. I believe that this purchase by the Government of these particularly-mentioned items is made necessary by the fact that they are controlled; isn't that true?

A. No, not entirely. We sometimes make purchases for

the contractors when we can buy a little cheaper than they can. There are some firms that will give the Government 15, 20 or 25 per cent discount that object to giving it to our contractors and write to the manufacturers and explain the type of arrangement we have in which case they give our operating contractors the same discount that they give us.

Q. Now, when you buy those supplies direct, that is, when the United States or the Atomic Energy Commission buys [fol. 358] them direct, there is no sales or use tax paid on those purchases by the Atomic Energy Commission, is there—or do you know?

A. I don't know.

Mr. Fowler: It is our information that in no case of direct purchase of materials or equipment or property by the United States Government or the Atomic Energy Commission is any sales or use tax paid to the State of Tennessee.

The Witness: I might quote for you the type of answer we give various companies who sometimes question the granting to one of our contractors of the same discount they give the Government.

Q. I appreciate your offer, but I don't think it is necessary.

Re-direct examination.

By Mr. Fowler:

Q. There is just one simple matter which I want to clear up. I understand that there is some change currently being made in the method of handling the telephone service, that is, whereas heretofore the Atomic Energy Commission has paid the Southern Bell Telephone Company directly for all services rendered, that some change is contemplated whereby the contractor will pay directly for a part of the service?

A. That is in accordance with a policy that applies to all of our operations of trying to assign to the operating contractors all operating functions. Now, we are endeavoring to transfer to our operating contractors the operation of the telephones which were facilities of the area. In accomplishing that, we find that we might be able to secure better service and somewhat more economically, by having most of the cost-plus-fixed-fee contractors enter into independent arrangements with Southern Bell Telephone company for their own services. The contractors

operating under the Office of Community Affairs will probably enter into their own negotiations with Southern Bell Telephone & Telegraph Company. The plant operating contractors, that is, Carbide & Carbon Chemical Corporation, will probably continue to take service from Southern Bell Telephone & Telegraph Company jointly with the Atomic Energy Commission, but will probably take over the operation of the switchboard which we now operate.

Re-cross examination.

By Mr. Humphreys:

Q. I take it that the situation is, summarizing briefly, from what you say along this line, that when the Atomic Energy Commission took over from the United States Army Engineers, it found a situation where the United States Army Engineers were engaged in a number of operations that could be handled by contractors, and in keeping with the Atomic Energy Commission's policy of having all of the operations handled by contractors as much as this can be done in keeping with the situation, you are turning over those services to the contractors?

[fol. 360] A. That's right. That is reflected by the large reduction in the number of direct Government employees at Oak Ridge. We now have approximately 60 per cent of the number of people we had at the time the Commission took over.

Q. Is it the policy and the purpose of the Commission to ultimately have all of the services discharged by contractors except as regards the policy of maintaining a surveillance for preservation of secrecy?

A. Not quite. The policy is to turn over to the operating contractors practically all of the direct operations. We do retain all policy-making and control functions. We retain certain of the security functions that you mentioned, such as shipment security and the patrol of the area as a whole. We retain control over source and fissionable material. We retain budgetary control and we retain over-all direction and administrative control. At the present time, we also have some other direct operations which we hope to get out of ultimately. We are still operating the communications, including both telephone and teletype. We will probably always have to retain a part of the teletype opera-

tions, which includes a cryptographic system for the transmittal of classified messages. We are now doing some work on the disposal of excess and surplus Government-owned materials that have accumulated during the construction and operating program which we hope ultimately to turn over to the operating contractor as soon as some of the [fol. 361] details can be worked out.

And Further Deponent Saith Not, Samuel R. Shapirie, by — — Court Reporter.

Sworn to before me this 4 April, 1949. — —,
Notary Public. My commission expires 4/14/52.

The witness, R. J. ROCHSTROH, being duly sworn, deposed as follows:

Direct examination.

By Mr. Fowler:

Q. Give your full name?

A. R. J. Rochstroh.

Q. Mr. Rochstroh, state your age and address.

A. 57; address, Room 146 Cambridge Hall, Oak Ridge, Tennessee.

Q. What is your occupation?

A. Traffic manager of the United States Atomic Energy Commission, Oak Ridge.

Q. What are the duties of your position?

[fol. 362] A. Handling all matters pertaining to freight and passenger and air travel and all motor freight and express shipments.

Q. How long have you held that position?

A. From December 1st, 1942.

Q. I take it then, you were in the employ of the Manhattan District?

A. Yes.

Q. Before the Atomic Energy Commission took over?

A. Yes, in the Corps of Engineers.

Q. The principal thing I want to ask you about, Mr. Rochstroh, concerns the use of the Government bill of lading in transporting purchases to Oak Ridge, particularly purchases made by contractors at Oak Ridge. Can you tell us

in brief whether or not such shipments have been made on Government bills of lading and if the practice was terminated here?

A. Shipments were made from the vendors on Government bills of lading off and on. Sometimes, we would furnish a Government bill of lading with the purchase order. We discontinued that for the reason that so many of the original documents would become lost. Shipments would come in collect, freight charges collect and we would convert to a Government bill of lading at destination. That was really compulsory at the start, due to the railroads having land grant rates with the Government.

Q. Now, by the phrase "at the start" what do you mean? [fol. 363] A. At the start of the job here, this job.

Q. That was in 1942 under the Manhattan District?

A. Yes.

Q. So, am I to understand that you are saying that from December, 1942 that it was compulsory to convert commercial bills of lading to Government bills of lading at destination?

A. Yes.

Q. Now, how long was that practice continued?

A. Up until May 12, 1948.

Q. Now, did the Government through that process of conversion get cheaper land grant rates?

A. Yes, up to October, 1946.

Q. And we all understand that land grant rates are cheaper than the ordinary commercial rates growing out of some relation of the Government to the land granted to the railroads?

A. Correct.

Q. Now, you say that in October, 1946 the Government ceased to derive any benefit from land grant rates?

A. They did, by an Act of Congress abolishing land grant rates, the 79th Congress.

Q. Do I understand that there are no longer any land grant rates anywhere in the United States?

A. So far as I know, there is none.

Q. When it became apparent in that way in October, 1946, that there was no longer any saving in transportation expenses to be effected by the use of Government bills of lading or the conversion to Government bills of lading what became the practice from October, 1946?

A. We continued to convert.

[fol. 364] Q. Why?

A. Well, it was a procedure with the contractors or the purchaser, whoever bought the material.

Q. You continued the same procedure?

A. Yes.

Q. Was it mandatory or optional after October, 1946?

A. Optional.

Q. Can you say whether or not most commercial bills of lading were converted or not?

A. I would say from that period on, most of them were because most of the materials we were receiving at that time were on Government procurement orders or contracts.

Q. Now, in the case of procurements on the order of Carbide & Carbon Chemical Corporation beginning in October, 1946 were most of them converted or not?

A. On certain commodities, yes. Minor shipments were not converted.

Q. How about Roane-Anderson Company?

A. We converted practically everything for Roane-Anderson Company.

Q. Now, you have mentioned May, 1948. What happened then?

A. It was the change of policy between the Division of Finance of the Atomic Energy Commission and Carbide & Carbon Chemical Corporation.

[fol. 365] Q. What was the change?

A. Authorizing Carbide & Carbon to pay all freight charges.

Q. They did it with the purpose of converting to Government bills of lading?

A. Yes. Let me clear that up: Except where it is on a Government purchase order or contract, it is still compulsory to convert.

Q. Even though there is no saving?

A. Yes.

Q. In the interim period from October, 1946 to May, 1948 the conversion to Government bill of lading did effect an avoidance of the three per cent Federal transportation tax?

A. That is correct.

Q. Taking the period prior to October, 1946 you have said that conversion of the bill of lading was mandatory; is that correct?

A. Yes.

Q. Was that true regardless whether or not shipment was f. o. b. the vendor or f. o. b. destination?

A. It didn't make any difference.

Q. Now, with particular reference to the cases here involved, Carbide & Carbon Chemical Corporation, I have certain papers I want you to examine and file. Now, for [fol. 366] the purpose of illustrating this conversion process and in order that the record may contain a more complete description of the method of handling procurements, I am going to hand you photostatic copy of the following papers: First, a bill of lading on a printed form printed apparently by the Tennessee Railroad Company, dated at Rosedale, Tennessee November 4, 1947 from Diamond Coal Mining Company relating to car No. 284291. I ask you to identify and file that as Exhibit No. 22 in the Carbide & Carbon case.

A. I so file it.

Q. I believe that the next step in the actual handling of the shipment would be the preparation of the freight bill by the Southern Railway Company with which railroad the Tennessee Railroad Company connects at Oneida; is that correct?

A. That's correct.

Q. I therefore hand you freight bill of Southern Railway Company dated November 7, 1947 bearing No. 20288, relating to Southern Railway car 284291 and ask you to identify and file that as Exhibit No. 23.

A. I so file.

Q. In the Carbide & Carbon cases. I hand you photostatic copy of United States Government bill of lading No. A. T. 17893 and ask you to identify and file that as Exhibit No. 24 in the Carbide & Carbon case.

[fol. 367] A. I so file it.

Q. I notice, Mr. Rochstroh, that the Government bill of lading just filed covers not only Southern Railway Company car No. 284,291 but also a number of other shipments from the Diamond Coal Mining Company. Does that indicate that the Government bill of lading was made to cover many of the commercial bills of lading?

A. It is mostly done to save clerical work.

Q. Now, finally, I hand you public voucher for transportation charges, that is, a photostatic copy, No. 4015853, and ask you to identify and file that as Exhibit No. 25 in the Carbide and Carbon case?

A. I do so.

Q. Now, Mr. Rochstroh, was the same process used in the preparation of papers in the case of Roane-Anderson Company procurements as in the case of Carbide & Carbon Chemical Corporation procurements that we have just described, namely, the issuance of a Government bill of lading?

A. Yes.

Q. And conversion and so forth?

A. Yes. I might explain something. This document prior to January 1st,—I am referring to the voucher Exhibit No. 25—prior to January 1st, 1947 all charges were paid, transportation charges were paid by the Finance Officer, United States Army, Washington, D. C., to the account of the Government until such time as the Atomic [fol. 368] Energy Commission took control of Oak Ridge.

Q. That was prior to what date?

A. January 1st, 1947.

Q. Mr. Rochstroh, do the Government bills of lading look alike so far as the printed form is concerned—and I particularly direct my question at the Government bills of lading used in the Roane-Anderson Company case; do they contain the same provisions on the front and back in the original printed form as the Government bill of lading which you have filed as Exhibit No. 24 in the Carbide & Carbon case?

A. Yes.

Q. I will, therefore, ask you to file as Exhibit No. 23 in the Roane-Anderson Company case a photostatic copy of the same paper that you filed as Exhibit No. 24 in the Carbide & Carbon case, being United States Government bill of lading No. A. T. 17893.

A. I do so.

Cross-examination.

By Mr. Humphreys:

Q. Mr. Rochstroh, this process of conversion to a Government bill of lading, does it consist of taking from the ordinary bill of lading the car numbers, weights and charges and putting those on a Government bill of lading and paying it on that basis? Is that it?

A. No.

[fol. 369] Q. What does it consist of?

A. Issuance of a Government bill of lading, attaching the commercial document, shipping document and copy of the freight bill.

Q. That, of course, all occurs, I take it, after the goods have been ordered and received and the original bill is turned in to your office and then the conversion takes place; is that right?

A. Yes.

Q. So that if Carbide & Carbon Chemical Corporation—just taking a typical case—if Carbide & Carbon ordered a carload of coal and it came out—we are speaking now of the time prior to May 12, 1948—and it came out and they received the coal and a bill of lading covering the freight charges came with it, they turn it in to your office and you all put it on a Government bill of lading and pay it on the Government basis; is that right?

A. That's correct.

Q. Now, I believe you say that in October, 1946 the Congress abolished the land grant rate ben-fits?

A. That is correct.

Q. Now, I believe you say that in October, 1946 the Congress abolished the land grant rate benefits by an Act of Congress and after that time it was optional whether you made conversion or not or whether you just went ahead and [fol. 370] paid it on the original bill or convert it?

A. We converted practically everything after May 12th, for the reason that we were saving the three per cent.

Q. Why did you stop converting on May 12th, 1948?

A. That is a policy issued by the powers to be and Carbide & Carbon.

Q. Now, Carbide & Carbon makes the purchase and pays the bill of lading?

A. That's correct.

Q. And incidentally pays the three per cent tax?

A. That's right.

Q. In other words, when it buys a carload of coal now from the Diamond Coal Mining Company, it orders the coal, it comes out and it gets the bill of lading and pays the three per cent Federal tax on the transportation?

A. Yes, on the transportation.

Q. And that has applied to shipments since May 12th, I mean the shipments to Carbide & Carbon?

A. On their own purchases, that is correct.

Redirect examination.

By Mr. Fowler:

Q. In order to get out of the three per cent Federal transportation tax, the shipment has to move on a United States Government bill of lading; is that correct?

[fol. 371] A. No, it can be converted to a Government bill of lading.

Q. Or has to be such as that conversion will take place?

A. Yes.

Q. And it is because no conversion is contemplated in the case of shipments on Carbide & Carbon's own order, that Carbide & Carbon goes ahead and pays the three per cent tax?

A. The only exemption is given to the United States Government on the three per cent transportation tax.

Q. On its own bills of lading?

A. Yes.

Recross examination.

By Mr. Humphreys:

Q. I believe you say that the Act only exempts the United States Government and that that is not considered as applying to purchases by Carbide & Carbon on its own billing originally; is that right?

A. If Carbide & Carbon pays the carrier by check, they have to include the transportation charges, or tax rather, of three per cent.

And further deponent saith not.

R. J. Rochstroh, by — — —, Court Reporter.

Sworn to before me this 4 April, 1949. — — —,
Notary Public. My commission expires: 4/14/52.

[fol. 372]

STIPULATION

Mr. Fowler: It is stipulated between counsel for the parties in all four of the cases to which the testimony already taken relates as follows:

(1) That the attachment hereto marked No. 29 in the Roane-Anderson Company cases and No. 26 in the Carbide

& Carbon Chemical Corporation cases is a photostatic copy of the regulations of the United States Atomic Energy Commission relating to control of source material to which the witness Charles Vanden Bulck referred on page 76 of his testimony, and that said exhibit may be received and considered as a part of the evidence.

(2) That the United States Government owns all of the land comprising the area known as the Clinton Engineer Works, including the town and townsite known as Oak Ridge, Tennessee.

Have I correctly states our understanding as to this stipulation?

Mr. Humphreys: Yes, I think I can make this stipulation in regard to what you have in mind to undertake to prove by Mr. Vanden Bulck.

It is stipulated that all of the buildings on the land comprising the area known as the Clinton Engineer Works, including the town of Oak Ridge, were built for the Government and belong to the Government and this stipulation is not to be considered ~~as a stipulation~~ on the part of the [fol. 373] defendant that the materials and supplies from which these buildings were constructed were the property of the Government before and at the — of incorporation into the buildings or were owned under such circumstances as to be exempt from sales or use tax liability, and our understanding is that we agree that this stipulation is not to be interpreted as being other than a fact bearing upon the issue, and does not stipulate the issue. Is that right, Mr. Fowler?

Mr. Fowler: That's right.

[fol. 374] IN THE SUPREME COURT OF THE STATE OF
TENNESSEE

CARBIDE AND CARBON CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

ROANE-ANDERSON COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

DIAMOND COAL MINING COMPANY and CARBIDE & CARBON
CHEMICAL CORPORATION

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

WILSON-WEESNER-WILKINSON and ROANE-ANDERSON
COMPANY

VS.

SAM K. CARSON, Commissioner of Finance & Taxation

PRAECIPE FOR CERTIFIED TRANSCRIPT FOR USE IN THE SUPREME
COURT OF THE UNITED STATES, IN CONNECTION WITH
PETITION FOR WRIT OF CERTIORARI

[fol. 375] To the Clerk of the Supreme Court:

You are hereby requested to prepare and certify the entire record of the causes on file in the Supreme Court of Tennessee, together with the orders and opinion of that Court, except that the following portions shall be deleted:

1. Exhibit A and Exhibit B to each original bill, the same being included as Exhibits to the testimony of witnesses duly filed.

2. Exhibits 1 and 2 to Stipulation dated June 7, 1949, and filed June 10, 1949, Exhibit 1 being a document published by the United States Government Printing Office entitled "A General Account of the Development of Methods of Using Atomic Energy for Military Purposes Under the Auspices of the United States Government,

1940-1945," written by H. D. Smyth, and the Exhibit 2 being page 1-22, inclusive, of the "Fifth Semi-Annual Report of the Atomic Energy Commission of the United States Government," dated January 1949, being also a document published by the United States Government Printing Office.

It is recognized that Judicial notice may be taken of the entire contents of said documents.

3. The following documents are also agreed to be official documents of the United States Government and Judicial notice may be taken of the entire contents. Same are, therefore, deleted from the record:

[fol. 376] Hearings before the Committee on Military Affairs—House of Representatives, Seventy-Ninth Congress, First Session on H. R. 4280, October 9 and 18, 1945.

Hearings before the Special Committee on Atomic Energy, United States Senate, Seventy-Ninth Congress, Session on S. 1717, Part 1 and Part 3.

Hearings before the Special Committee on Atomic Energy, United States Senate, Seventy-Ninth Congress, First Session pursuant to S. Res. 179, Parts 1 and 3.

Hearings before the Joint Committee on Atomic Energy, Congress of the United States, Eighty-First Congress, First Session on Los Alamos Retrocession Bill and AEC Contract Policy.

Senate Document No. 96, 80th Congress, 1st Session. Letter from the Chairman and Members of the United States Atomic Energy Commission.

Report No. 1211, 79th Congress, 2d Session, Senate Atomic Energy Act of 1946.

Report No. 1186, 79th Congress, 1st Session—House of Representatives—Atomic Energy Act of 1945, and Part 2 of Report No. 1186.

The exhibits filed in the consolidated causes which are not deleted by this praecipe shall be certified and transmitted to the Clerk of the Supreme Court of the United States in their original form, as allowed by the order of the Supreme Court of Tennessee.

(S.) Allison B. Humphreys, Jr., Attorney for Petitioner; James Clarence Evans, Commissioner of

Finance and Taxation of the State of Tennessee;
 (S.) S. Frank Fowler, Attorney for Respondents;
 (S.) Berryman Green, Attorney for Intervening
 Petitioner, United States of America.

[fol. 377]

STATE OF TENNESSEE

CITY OF NASHVILLE,

Davidson County:

I, David S. Lansden, Clerk of the Supreme Court for the Middle Division of Tennessee, do certify that the Honorable A. B. Neil, Chief Justice of the Supreme Court of the State of Tennessee, who has thereunto subscribed his name, is the Chief Justice of the Supreme Court of the State of Tennessee, duly commissioned and qualified. To all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this the tenth day of May, 1951.

David S. Lansden, Clerk, Supreme Court. (Seal.)

[fol. 378]

STATE OF TENNESSEE

CITY OF NASHVILLE,

Davidson County:

I, A. B. Neil, Chief Justice of the Supreme Court for the State of Tennessee, do certify that the above named David S. Lansden, by whom the foregoing attestation made, was at the time of so making the same and is now the Clerk of the said Court duly commissioned and qualified. To all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; that the seal thereto annexed is the seal of the said Court and that said attestation so made by him is in due form.

In testimony whereof, I have hereunto set my hand, this the tenth day of May, 1951.

A. B. Neil, Chief Justice, Supreme Court of Tennessee.

[fol. 379]

STATE OF TENNESSEE

CITY OF NASHVILLE,

Davidson County:

I, David S. Lansden, Clerk of the Supreme Court for the Middle Division of Tennessee, do hereby certify that the attached transcript of the record in the case of Carbide and Carbon Chemicals Corporation vs. Sam K. Carson, Commissioner of Finance & Taxation and Diamond Coal Mining Company and Carbide & Carbon Chemicals Corporation vs. Sam K. Carson, Commissioner of Finance & Taxation is a true copy as shown by the records of this Court in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court at Nashville, Tennessee, this the tenth day of May, 1951.

David S. Lansden, Clerk, Supreme Court. (Seal.)

[fol. 380]

Bill of Costs

For preparing record \$199.00

[fol. 381] [Stamp:] Received May 17, 1951. Office of the
Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM,
1950

No. —

SAM K. CARSON, Commissioner of Finance, etc., Petitioner,

vs.

CARBIDE AND CARBON CHEMICALS CORP., et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 6, 1951.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated this 17th (seventeenth) day of May, 1951.

[fol. 382] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

No. 187

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the Supreme Court of the State of Tennessee is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.